TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 330 89.

C. S. THOMPSON, JOSEPH MAZET, ROSE D. MOSHER, F. M. CULP, HENRY G. VINCENT, R. J. TARBELL, JOHN J. SHORE, I. B. COX, AND EDWIN G. CARTER, PLAINTIFFS IN ERROR,

vs.

THE LOS ANGELES FARMING AND MILLING COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JUNE 30, 1899.

(17,450.)

10878

(17,450.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 336.

C. S. THOMPSON, JOSEPH MAZET, ROSE D. MOSHER, F. M. CULP, HENRY C. VINCENT, R. J. TARBELL, JOHN J. SHORE, I. B. COX, AND EDWIN G. CARTER, PLAINTIFFS IN ERROR,

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10879

IN THE

SUPERIOR COURT

OF THE

COUNTY OF LOS ANGELES,

STATE OF CALIFORNIA.

Los Angeles Farming and Milling Company, (a corporation),

Plaintiff,

vs.

C. S. Thompson, John Richards, H. Krytzer, Mrs. Lizzie McCafferty, Miss Rosie Mosher, F. N. Culp, I. B. Cox, M. B. Andrews, John T. Sawtelle, George Lewis, Frank Arballo, Joe Marsett, W. E. Chase, William Scaif, J. J. Shore, N. Haag, Alexander Bell, J. E. Lepart, F. J. Spencer, H. C. Vincent, E. N. Ellsworth, E. P. Haskill, T. C. Boardman, E. Dibble, Lucien Flicker, Henry Flicker, Abe Flicker, Charles Flicker, Steve Flicker, Anthony Flicker, Edward Flicker, Philip Flicker, Grove Flicker, Abner Flicker, James Flicker, Thomas Flicker, Selwyn Flicker, Trow Flicker, Harris Flicker, Marston Flicker, August Flicker, Albert Flicker, Truman Flicker, Samuel Flicker, Silas Flicker, Horace Flicker, Jane Flicker, Mary Flicker, Annie Flicker, Lucien Kicker, Henry Kicker, Abe Kicker, Charles Kicker, Steve Kicker, Anthony Kicker, Edward Kicker, Philip Kicker, Grove Kicker, Abner Kicker, James Kicker, Thomas Kicker, Selwyn Kicker, Trow Kicker, Harris Kicker, Marston Kicker, August Kicker, Albert Kicker, Truman Kicker, Samuel Kicker, Silas Kicker, Horace Kicker, Jane Kicker, Mary Kicker, Annie Kicker, Lucien Bulldozer, Henry Bulldozer, Abe Bulldozer, Charles Bulldozer, Steve Bulldozer, Anthony Bulldozer, Edward Bulldozer, Philip Bulldozer, Grove Bulldozer, Abner Bulldozer, James Bulldozer, Thomas Bulldozer, Selwyn Bulldozer, Trow Bulldozer, Harris Bulldozer, Marston Bulldozer, August Bulldozer, Albert Bulldozer, Truman Bulldozer, Samuel Bulldozer, Silas Bulldozer, Horace Bulldozer, Jane Bulldozer, Mary Bulldozer, Annie Bulldozer, Lucien Sticker, Henry Sticker, Abe Sticker, Charles Sticker, Steve Sticker, Anthony Sticker, Edward Sticker, Philip Sticker, Grove Sticker, Abner Sticker, James Sticker, Thomas Sticker, Selwyn Sticker, Trow Sticker, Harris Sticker, Marston Sticker, August Sticker, Albert Sticker, Truman Sticker, Samuel Sticker, Silas Sticker, Horace Sticker, Jane Sticker, Mary Sticker, Annie Sticker,

Defendants.

COMPLAINT.

Comes now the plaintiff herein and complaining

4 of the defendants hereinbefore mentioned, alleges and shows:

I.

That for more than five years last past, the plaintiff has been and still is a corporation duly organized and existing under the laws of the state of California, having its office and principal place of business in the city and county of San Francisco, state of California, and also having a branch office in the city of Los Angeles, county of Los Angeles, state of California.

II.

5 That heretofore, to wit, on the 8th day of January, 1873, the government of the United States of America, by a patent by it duly issued and delivered to Eulogio K de Celis, granted to said Eulogio K de Celis, claimant therefor under a Mexican grant to him made on the 17th day of June, 1846, by Pio Pico, the constitutional governor of the department of the Californias, a patent of that certain tract of land situated in the county of Los Angeles, state of California, and known as the "Rancho ex-Mission de San Fernando," comprising a total area of 116,858.46 acres of land, according to the final survey thereof, 6 which said patent was, on the 21st day of February, 1876, recorded in book 1 of patents, page 595, in the office of the recorder of Los Angeles county, California.

"E" sticken out by order of court Nov. 26, 1891. J. M. D.

III.

That on the 2nd day of July, 1869, and subsequent to the final confirmation of said grant, the San Fernando Farm Homestead Association, a corporation, acquired the legal title to and became then and there the absolute owner in fee of an undivided one-half of said Rancho ex-Mission de San Fernando.

7 IV.

That on the 23rd day of September, 1869, the said San Fernando Farm Homestead Association commenced an action in the District Court of the seventeenth judicial district of the state of California in and for the county of Los Angeles, against Eulogio X. de Celis and others, said action being numbered 1526 upon the register of actions of said court, for the partition of said rancho, and subsequently, after proper proceedings had therein, a final decree of partition was duly made, given and entered in said action, whereby there was awarded and set off in 8 severalty to said San Fernando Farm Homestead Association, free and clear of any claim of the other parties to said action, that portion of said Rancho ex-Mission de San Fernando described as follows, to wit:

Beginning at the live oak tree 36 inches in diameter, station 2 of the official survey of the said Rancho ex-Mission de San Fernando, and station 3 of the final and official survey of Rancho Providencia, and run thence north 8° W., along the line of the official survey of the said Rancho ex-Mission San Fernando, and at 190.27 chains intersect the line 9 between townships 1 and 2 north, range 14 west of the San Bernardino meridian, 4.93 chains west of corner to sections 4, 5, 32 and 33, 271.30 chains to a sycamore post in rock mound marked H. A., 2 station; thence west and at 143.84 chains to the corner to sections 25, 30, 31 and 36, on line between ranges 14 and 15 west, township 2 north, H. A., 3 station; thence S., 89° 36′ W., 476.64 chains to stake, the corner to sections 25, 30, 31 and 36, on line between ranges 15 and 16 west, township 2 north, H. A., 4 station; thence S., 89° 33′ W., on line parallel to the south boundary of township 2 north, range 16 west, 476.10 chains to post, the corner to sections 25, 30,

10 31 and 36, on line between ranges 16 and 17 west, township 2 north, H. A., 5 station; thence west on line parallel to the south boundary of township 2 north, range 17 west, and at 206.71 chains intersect the western exterior boundary of Rancho ex-Mission San Fernando, H. A., 6 station; thence S., 12½° W., along the line of the official survey of said Rancho ex-Mission San Fernando, and at 104.92 chains to the forked white oak tree, 25 inches in diameter, station 34 of the official survey of said Rancho ex-Mission San Fernando, and station 4 of the official survey of the Rancho El Escorpion, H. A., 7 station;
11 thence S., 84° E., 105.34 chains to red oak post, in a mound of stones marked S. F., 35 station, and station 3, and northeast corner of Rancho El Escorpion, H. A., 8 station; thence S., 6° W., 105.43 chains to a redwood post marked S. F., 36 station, and station 2, and southeast corner Rancho El Escorpion, H. A., 9 station; thence N., 84° W., 105.34 chains to a black oak stake marked S. F., station 37, in mound of rock and earth, being station 1, and southwest corner of Rancho El Escorpion station, at the east base of the ridge called Sierra Santa Susanna, H. A., 10 station; thence S., 32° 37′ E., 161.51 chains to a live oak tree
12 45 inches in diameter, marked on the west side with a D X S. F., 38 station, and H. A., 11 station; thence S., 36¼° E., 44.96 chains, intersect offset base line, 133.35 chains west of corner, 58 chains south of corner to sections 13, 18, 19 and 24, on line between ranges 16 and 17 west, township 1 north, S. B. M., 76.70 chains, to blazed white oak tree, 28 inches in diameter, station 39, S. F., H. A., 12 station; thence N., 58½° E., 25.00 chains to live oak tree 35 inches in diameter, S. F., 40 station, and H. A., 13 station; thence N., 89° E., 39.00 chains to a brown sandstone rock, 24x9x5 inches, S. F., 41 station, H. A., 14 station; thence S., 65¾° E., 272.00

13 chains to a sandstone rock 12x12x10 inches, marked S. F., 42 station, H. A., 15 station; thence N., 87½° E., 327.97 chains to a large sandstone rock 24x16x8 inches, in an irregular mound of rocks on a very high peak about 800 feet above the San Fernando valley, marked S. F. and S. F., 43 station, and H. A., 16 station; thence S., 87° E., 680.50 chains to a sandstone rock marked S. F., 44 station, buried in earth with a face 14 inches in diameter cropping out of same, H. A., 17 station; thence N., 7¼° E., 61.34 chains to stake in stone mound, S. F., 1 station, and
14 station 4, La Providencia, H. A., 18 station; thence N., 20½° W., along the line of the official survey of the Rancho San Fernando, and at 159.43 chains, intersecting offset to township line in township 1 north, range 14 west, of the San Bernardino meridian, 35.95 chains east of corner to sections 16, 17, 20 and 21, 210.68 chains to live oak tree, 36 inches in diameter, station 2, San Fernando station No. 3, La Providencia, and H. A., station 1, point of beginning, containing 64,011.53 acres.

Saving and excepting therefrom, however, that portion thereof known as the Rancho El Encino, containing 4460.73 acres of land, which lies wholly
15 within the said portion of said Rancho ex-Mission de San Fernando so set apart to plaintiff in said action, leaving a total acreage of 59,550.81 acres of said rancho awarded and set aside to the plaintiff in said action by the final decree of partition, all of which lies within the patent boundaries of said rancho.

V.

That by proper mesne conveyances the plaintiff herein succeeded to the title of the San Fernando Farm Homestead Association to all that portion of said rancho set apart to said San Fernando Farm Homestead Association by said final decree of parti-

tion, and is the owner in fee and entitled to the possession of all thereof, except the eastern twelve thousand acres of said tract of land awarded to said San Fernando Farm Homestead Association by said decree, heretofore sold by said plaintiff, and being that portion of said larger tract lying east of a north and south line so drawn as to cut off 12,000 acres on the east end thereof.

VI.

That plaintiff's predecessors in interest and plaintiff have, ever since the grant of said rancho by the Mexican government, as aforesaid, on the 17th day of June, 1846, and until the date hereinafter specified, been in the open, notorious, exclusive, continuous, adverse possession of said land and all thereof, claiming to be the owners in fee thereof, and asserting title to the same under said grant and the patent issued to said de Celis, and under said decree of partition hereinbefore referred to, as hereinbefore stated, adversely to all the world.

VII.

That said patent has never been modified or set aside by any judgment rendered in any action brought in any court of proper jurisdiction, by the attorney general of the United States, or at his instance, or in any other manner, but the United States government has always and does now recognize plaintiff's title thereto under said patent, and said patent is still in full force and effect.

VIII.

That for the past twenty years plaintiff and its predecessor in interest, the San Fernando Farm Homestead Association have been continuously and uninterruptedly engaged in farming and pasturing said lands and all thereof, and have produced annually large crops of grain, principally wheat, on said premises, and have erected and maintained at great

expense numerous farming stations on said premises, and have reduced large areas of said land to a high state of cultivation; that plaintiff now has on said premises six hundred head of work horses and mules necessarily used in its farming operations, and full and complete sets of machinery of every kind, nature and description necessary and convenient to carry on such farming operations, and has built warehouses for the storage of grain and the protection of said machinery, and in connection with such farming operations has built and maintained and for ten years conducted, at the city of Los Angeles, the largest flouring and feed mill in Southern California, and that plaintiff depends almost entirely upon the products of said rancho with which to run said mill, and cannot run or operate the same unless it is permitted to so carry on its said farming operations.

IX.

That a large portion of said lands are of great value for wheat raising, and that plaintiff has always been very careful to keep, and has in fact wholly excluded all grains and seeds other than wheat off of and from the wheat-bearing lands on said rancho, upon which lands defendants have entered, as hereinafter stated, and that if rye, oats, barley, cheat, or seeds other than wheat are once introduced into said lands, its value will be greatly impaired for wheat raising, and the introduction of such foreign and spurious grains will necessitate the outlay of large sums of money by the plaintiff herein to eradicate the same therefrom, and the injury to plaintiff thereby caused will be irreparable. That to successfully produce wheat upon said lands, and to use the same with profit, the soil must be kept free from the seed of all such foreign and spurious grains, and that the placing of any seed or grain other than

22 wheat upon said premises will injure said lands and plaintiff's inheritance therein.

X.

That a large area of said lands, not suitable for grain raising, is valuable for pasturage, and another large portion thereof, in addition to being valuable for pasturage, is covered with a heavy growth of natural timber, which is of great value for wood. That plaintiff, for the fall and winter pasturage of its stock and herds, has preserved many acres of said lands for pasturage with a full growth of natural grain and grasses, and that upon plaintiff's grain
23 fields is, at the present time, a large stand of grain stubble valuable for pasturage, and that said pasture lands and said stubble fields are at this season of the year very dry and highly inflammable.

XI.

That plaintiff is now ready to begin to plow its fields and sow its crops thereon for the coming farming year, and will, for the next five or six months, be so engaged.

XII.

That while plaintiff was so the owner and entitled to the possession of said lands, the defendants, on
24 the 28th day of October, 1891, unlawfully entered into the possession of the said premises and ousted the plaintiff therefrom, and now unlawfully withhold the possession thereof from the plaintiff herein, to its damage in the sum of five thousand dollars, and said defendants claim an interest in said premises, and claim to be entitled to possession thereof, but such claim is without right and unlawful, and defendants have no interest in, or claim to said premises, or any part thereof.

XIII.

That said defendants are scattered all over said lands, and are camping thereon, and running sur-

25 veying parties over the fields of plaintiff, and are engaged in building houses and digging wells thereon, and threaten permanently to settle upon said lands and erect permanent dwellings and barns and outhouses upon said lands, and are also threatening to, and will, unless restrained by the order of this court, plow the same and sow crops thereon; and are engaged in cutting and hauling away wood from said lands, and are destroying the timber and trees thereon, and threaten to continue so to do; and have introduced, and threaten to continue to introduce on to said lands domestic fowls and animals of
26 all descriptions; and are carelessly setting out camp fires on said lands, which have already destroyed over fifteen hundred acres of valuable pasturage, and endangered the buildings and warehouses of the plaintiff hereinbefore described, and threaten to continue to light said fires and to burn off and wholly destroy further quantities of plaintiff's pasturage and stubble, and further endanger said buildings and warehouses of plaintiff. That defendants are also with their animals and wagons trampling down and consuming valuable stubble and pasturage of plaintiff, and are driving and herding stock
27 on said lands, and are promiscuously feeding their animals whole barley and other noxious grains over the lands of plaintiff devoted exclusively to the growing of wheat thereon, whereby said soil will be seeded with said barley and injurious grains, and thus rendered unfit for wheat growing or profitable farming; that defendants are threatening to take possession of plaintiff's buildings, and are camping in many instances in tents in the immediate vicinity thereof; and that the said defendants will, unless restrained by an order of this court, continue to do each and all of the acts above mentioned and complained of and so threatened by them to be done,

and that the continuance of said acts will prevent plaintiff from pasturing its stock, or working its fields, or sowing its crops, or conducting its said farming operations, or operating its said flouring mills, and will work great and irreparable damage both to the freehold of plaintiff in said lands and to the farming and milling operations of the plaintiff conducted therein.

XIV.

That plaintiff is informed and believes that defendants are insolvent, and are unable to respond to damages herein.

XV.

That the value of the rents, issues and profits of the said premises from the 28th day of October, 1891, and whereby plaintiff has been excluded therefrom by the defendants, is the sum of five thousand dollars.

XVI.

That the true names of the defendants sued herein by the fictitious names of Lucien Flicker, Henry Flicker, Abe Flicker, Charles Flicker, Steve Flicker, Anthony Flicker, Edward Flicker, Philip Flicker, Grove Flicker, Abner Flicker, James Flicker, Thomas Flicker, Selwyn Flicker, Trow Flicker, Harris Flicker, Marston Flicker, August Flicker, Albert Flicker, Truman Flicker, Samuel Flicker, Silas Flicker, Horace Flicker, Jane Flicker, Mary Flicker, Annie Flicker, Lucien Kicker, Henry Kicker, Abe Kicker, Charles Kicker, Steve Kicker, Anthony Kicker, Edward Kicker, Philip Kicker, Grove Kicker, Abner Kicker, James Kicker, Thomas Kicker, Selwyn Kicker, Trow Kicker, Harris Kicker, Marston Kicker, August Kicker, Albert Kicker, Truman Kicker, Samuel Kicker, Silas Kicker, Horace Kicker, Jane Kicker, Mary Kicker, Annie Kicker, Lucien Bulldozer, Henry Bulldozer, Abe Bulldozer, Charles

Bulldozer, Steve Bulldozer, Anthony Bulldozer, Edward Bulldozer, Philip Bulldozer, Grove Bulldozer, Abner Bulldozer, James Bulldozer, Thomas Bulldozer, Selwyn Bulldozer, Trow Bulldozer, Harris Bulldozer, Marston Bulldozer, August Bulldozer, Albert Bulldozer, Truman Bulldozer, Samuel Bulldozer, Silas Bulldozer, Horace Bulldozer, Jane Bulldozer, Mary Bulldozer, Annie Bulldozer, Lucien Sticker, Henry Sticker, Abe Sticker, Charles Sticker, Steve Sticker, Anthony Sticker, Edward Sticker, Philip Sticker, Grove Sticker, Abner Sticker, James Sticker, Thomas Sticker, Selwyn Sticker, Trow Sticker, Harris Sticker, Marston Sticker, August Sticker, Albert Sticker, Truman Sticker, Samuel Sticker, Silas Sticker, Horace Sticker, Jane Sticker, Mary Sticker, Annie Sticker, are to plaintiff unknown, and plaintiff asks that when the true names of said defendants so sued under said fictitious names be discovered that they be inserted herein.

WHEREFORE, plaintiff prays judgment against the defendants for the restitution of the possession of the premises hereinbefore described owned by it, and for the sum of five thousand dollars, damages, value of said rents, issues and profits, and for costs of suit.

That the defendants, and each of them, pending this action, be enjoined and restrained by the order of this court from camping or staying upon the lands hereinbefore described, or surveying the same, or from walking, riding or driving over plaintiff's plowed fields, or building dwelling houses upon the lands hereinbefore described, or any portion thereof, or digging wells thereon, or any portion thereof, or attempting to settle thereon, or erect permanent dwellings, barns, or outhouses thereon, or from plowing said lands and sowing crops thereon, or any portion thereof, or from cutting or destroying any

of the timber or trees thereon, or any portion thereof, or hauling any wood away from said lands, or from introducing on to said lands any domestic fowls or animals of any description, or from driving or herding any animals on said lands, or from setting out camp fires on said lands, or from burning off or in any manner destroying the pasturage and stubble now growing upon said lands, or any portion thereof, or from trampling down with their animals and wagons, or consuming with their animals, the said stubble and pasturage growing on said lands, or from feeding their animals whole barley or other grains, or any grains, upon said lands of plaintiff, or from taking possession of any of the plaintiff's buildings, or from doing any other act or thing that will prevent the plaintiff from pasturing its stock upon said lands, or working its fields, or sowing its crops, or conducting its farming operations upon said lands as it has heretofore done, and that upon the trial of this action said injunction be made perpetual.

STEPHEN M. WHITE AND
GRAVES, O'MELVENY & SHANKLAND,
Attorneys for Plaintiff.

Duly verified.
Endorsed: Filed Oct. 31, 1891.

[TITLE OF COURT AND CAUSE.]

DEMURRER.

The defendants in the above-entitled action demur to the plaintiff's complaint filed herein, and as a ground of demurrer allege:

That said complaint does not state facts sufficient

37 to constitute a cause of action against the said defendants, or either of them.

H. BLEECKER &
JOHN D. POPE,
Attorneys for Defendants.

Endorsed: Filed Dec. 7, 1891.

Demurrer overruled for want of presentation, Jan. 11, 1892.

Attest: T. H. WARD, *Clerk.*
By J. M. DUNSMOOR, *Deputy.*

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38 [TITLE OF COURT AND CAUSE.]

AMENDMENTS TO THE COMPLAINT.

Comes now the plaintiff herein, and amends its complaint filed herein, in the manner following, to wit:

I.

Strike out of said complaint the name of Lucien Flicker, wherever it occurs, and insert therein, in place thereof, the name of R. J. Tarbell, the true name of said defendant.

Strike out of said complaint the name of Henry Flicker, wherever it occurs, and insert therein, in place thereof, the name of H. Gilleland, the true
39 name of said defendant.

Strike out of said complaint the name of Abe Flicker, wherever it occurs, and insert therein, in place thereof, the name of G. Ritzman, the true name of said defendant.

Strike out of said complaint the name of Charles Flicker, wherever it occurs, and insert therein, in place thereof, the name of T. W. Price, the true name of said defendant.

Strike out of said complaint the name of Steve Flicker, wherever it occurs, and insert therein, in place thereof, the name of S. W. Price, the true name of said defendant.

40 Strike out of said complaint the name of Anthony Flicker, wherever it occurs, and insert therein, in place thereof, the name of P. D. Couch, the true name of said defendant.

Strike out of said complaint the name of Edward Flicker, wherever it occurs, and insert therein, in place thereof, the name of T. R. Newell, the true name of said defendant.

Strike out of said complaint the name of Philip Flicker, wherever it occurs, and insert therein, in place thereof, the name of H. R. Douglass, the true name of said defendant.

41 Strike out of said complaint the name of Grove Flicker, wherever it occurs, and insert therein, in place thereof, the name of Harvey A. Branscombe, the true name of said defendant.

Strike out of said complaint the name of Abner Flicker, wherever it occurs, and insert therein, in place thereof, the name of Edwin Carter, the true name of said defendant.

Strike out of said complaint the name of Jane Flicker, wherever it occurs, and insert therein, in place thereof, the name of Bertha Shore, the true name of said defendant.

42 Strike out of said complaint the name of Mary Flicker, wherever it occurs, and insert therein, in place thereof, the name of Patience Spencer, the true name of said defendant.

Strike out of said complaint the name of Annie Flicker, wherever it occurs, and insert therein, in place thereof, the name of Eliza Vincent, the true name of said defendant.

Strike out of said complaint the name of Lucien Kicker, wherever it occurs, and insert therein, in place thereof, the name of Andreas Chavez, the true name of said defendant.

Strike out of said complaint the name of James

Kicker, wherever it occurs, and insert therein, in place thereof, the name of J. L. Brown, the true name of said defendant.

Strike out of said complaint the name of Jane Kicker, wherever it occurs, and insert therein, in place thereof, the name of Clara Dennison, the true name of said defendant.

GRAVES, O'MELVENY & SHANKLAND,
AND S. M. WHITE,
Attorneys for Plaintiff.

Duly verified.

Endorsed: Filed Nov. 23, 1893.

[TITLE OF COURT AND CAUSE.]

AMENDED ANSWER OF ROSE D. MOSHER.

Now comes Rose D. Mosher one of the defendants in this action, and by leave of the court, files this her amended answer to plaintiff's complaint herein.

I.

In answer to the allegations contained in paragraph or division I of plaintiff's said complaint, this defendant says that she has no information or belief on the subject of the truth or falsehood of said allegations sufficient to enable her to answer them or either of them; and upon that ground she denies that for more than five years last past, or at all, plaintiff has been or is a corporation duly organized or organized at all, or existing under the laws of California, and denies that its office or principal place of business is or ever was in the city and county of San Francisco, state of California, and denies that it has a branch office in the city of Los Angeles, state aforesaid.

46 II.

In answer to plaintiff's allegation No. II, this defendant says she is informed and believes and alleges on information and belief that it is not true that either on the 8th day of January, 1873, or at any other time the government of the United States of America, by a patent duly issued or by a patent issued at all or delivered to Eulogio F. de Celis, ever granted to said Eulogio F. de Celis (claimant therefor under a Mexican grant to him made, either on the 17th day of June, 1846, or at all, by Pio Pico, the constitutional governor of the department of the Califor-
47 nias, or by any other governor or officer or person), a patent for that certain tract of land situated in the county of Los Angeles, state of California, and known as the Rancho ex-Mission de San Fernando, comprising either 116,858.46 acres or any other quantity of land, either according to the final survey thereof, or at all, and denies that any such patent as that alleged or any patent was on the 21st day of February, 1876, or at all, recorded in book 1 of patents, page 595, or in any other book in the office of the recorder of Los Angeles county, California.

48 And defendant specifically denies on information and belief that any such grant as that described in plaintiff's complaint, or any grant embracing the premises in controversy or any part thereof, was ever made to or in favor of said Eulogio F. de Celis either by said governor Pio Pico or by any one else authorized to make Mexican grants.

III.

This defendant says that she is informed and believes and alleges on information and belief that on said 8th day of January, 1873, the government of the United States of America issued to and in favor of one Eulogio de Celis, then deceased, a so-

called patent, and tendered the same to said Eulogio F. de Celis referred to in plaintiff's complaint, who was then and there the duly appointed and acting administrator of the estate of the said Eulogio de Celis, and that the said Eulogio F. de Celis then and there and always refused as such administrator to accept said patent, because of certain exceptions, reservations and qualifications contained therein.

Further answering said third paragraph or division of plaintiff's complaint, this defendant says she is informed and believes and alleges on information and belief that the said alleged patent so issued in favor of said Eulogio de Celis, and tendered to and refused by said Eulogio F. de Celis, was issued without authority of law and then was and still is utterly void for reasons which will appear more fully as follows, to wit:

On the 7th day of October, 1852, the said Eulogio de Celis, under the name of Eulogio Celis, by his attorney N. Hubert, filed in the office of "The Commissioners to ascertain and settle the private Land Claims in the state of California," his notice and petition for confirmation of a claim to the lands therein described, which said notice and petition were in substance as follows, to wit:

"Before the commissioners to ascertain and settle "the private land claims in the state of California, "Eulogio Celis gives notice that he claims a tract of "land in the present county of Los Angeles known "by the name of Mission of San Fernando, bounded "as follows:

"On the north by the ranch of San Francisco, on "the west by the mountains of Santa Susanna, on "the east by the rancho of Miguel Triumfo, and on "the south by the mountains of Porte Zuela, which "tract is supposed to contain 14 square leagues.

"Said land was sold to the said Celis by a deed of

52 "grant dated 17th June, 1846, by Pio Pico, consti-
"tutional gov'r of the Californias, thereto duly
"authorized by the supreme government of the
"nation and by a decree of the departmental assem-
"bly of April 3rd, 1846. Said sale was made for the
"sum of $14,000, which was paid by the said Celis
"to the said Pico, who acknowledged the receipt
"thereof, as will more fully appear by reference to
"the aforesaid deed of grant, copy whereof marked
"A is hereto annexed, together with a certified copy
"of the instructions from the minister of war and
"navy to the governor of the Californias marked B,
53 "and a certified copy of the entry made in the
"archives of the former Spanish and Mexican terri-
"tory of department of Upper California of the
"aforesaid, and of grant marked C, which said docu-
"ments are hereto annexed.

"Claimant avers that the aforesaid deed of sale
"contains the condition that the government of
"Mexico shall have the right to annul —— contract
"by reimbursing to the claimant the aforesaid sum
"of $14,000, with the common rates of interest, and
"in case said sum is not reimbursed within said
"eight months, said Mission of San Fernando shall
54 "be his in full property; and the claimant avers that
"said sum of $14,000 was never reimbursed to him
"by the Mexican government, or by any person
"whatsoever.

"Said Mission of San Fernando was leased by the
"government of Mexico to A. Pico in the year 1845
"for the term of —— years, which lessee has been
"in the occupancy of said property up to the pres-
"ent date.

"Claimant further avers that he knows of no
"other claim to the aforesaid mission, and he relies

55 "on the documents above referred to and witnesses "he shall produce to substantiate his claim.

"N. HUBERT, *Att'y for Claimant.*

"Filed in office October 7th, 1852.

"[Signed] GEO. FISHER, *Sec'y.*"

Accompanying said notice and petition was filed the following translation of the alleged grant referred to therein, to wit:

"TRANSLATION OF DEED OF GRANT.

"The undersigned, constitutional governor of the "department of Californias, in virtue of the powers "vested unto him by the supreme government of
56 "the nation, and in virtue of a decree of the honor- "able departmental assembly of April thirteenth of "the present year, to raise means for the purpose of "maintaining the integrity of the territory of this "department, for the sum of fourteen thousand "dollars which he receives, sells unto to Don "Eulogio de Celis and his heirs the ex-Mission of "San Fernando, with all its properties, estates, lands "and movables, with the exception of the church "and all its appurtenances, which remains for "public use.

"Said purchaser obligating himself to maintain
57 "on their lands the old Indians on the premises dur- "ing their lifetime, with the right to make their "crops, with the only condition that they shall not "have the right to sell the lands they cultivate, and "any other which they possess without anterior title "from the departmental government, for all of "which the aforesaid Señor Celis shall be acknowl- "edged as the legitimate owner of the aforesaid ex- "Mission of San Fernando, to use the same as to "him shall seem best, guaranteeing unto him as "this government does guarantee that he is well "possessed of the aforesaid estate, with all the pre- "rogatives granted by law to purchasers, with the

58 "only condition that the above mentioned purchaser "shall not take possession within the space of eight "months from the date hereof, within which delay "the government shall have the right to amend this "contract by reimbursing to the aforesaid Señor "Celis the sum of fourteen thousand dollars, with "interest at the current commercial rates; but if this "reimbursement is not operated within the afore- "said eight months, this sale shall be valid.

"The above mentioned purchaser binds himself "to warrant to the father minister of the aforesaid "establishment his subsistence and clothing, with all
59 "possible decency, together with the rooms assigned "to him, or those which he justly requires.

"And for the establishment of this fact and the "security of the purchaser, the present document is "issued, and shall be acknowledged and respected "by all the authorities of the department for its "better accomplishment.

"And in faith of which the undersigned and "secretary of the department grant their authority "and affix their signatures in the city of Los "Angeles, on this ordinary paper for want of "stamped paper, the seventeenth of June, one
60 "thousand eight hundred and forty-six.

"PIO PICO.

"JOSE MATIAS MORENO, *Secretary pro tem.*

"Let entry of the above be made in the respective "book. MORENO.

"Filed in office, October 7, 1852.

"[Signed] GEO. FISHER, *Sec'y.*"

And defendant avers that pursuant to said petition, to wit, July 3rd, 1855, said commissioners made and filed their opinion and decree purporting to confirm said alleged grant, as follows, to wit:

61 "EULOGIO DE CELIS,
vs.
THE UNITED STATES.

"For the ex-Mission of San Fernando, situate in "the county of Los Angeles, containing about 13 "square leagues.

"This claim is based upon a grant issued to the "claimant by Governor Pio Pico on the 17th day of "June, 1846.

"The grant purports to have been made in con- "sideration of the payment of the sum of $14,000.

62 "Pio Pico testifies that he executed the grant at the "date that the same bears, and that it was made under "special instructions of the government, for the "purpose of raising the necessary funds to enable "the departm't to prepare for a defence against the "attack of the Americans, and that the sum of "$14,000 was actually received by him from the "grantee in consideration thereof, and that the "funds were used by him for the benefit of the "nation in the defence of the same.

"The genuineness of the grant is hereby estab- "lished, and the circumstances under which it was "made so clearly explained as to leave no doubt

63 "but it was done in good faith.

"The grant contains a clause reserving the right "of the government to annul the same at any time "within 8 months from the date thereof by refunding "to the grantee the consideration money together "with the usual rate of interest thereon.

"Which rate, if the transaction had been between "individuals, changed the nature of the grant to "that of a mortgage, but to apply the doctrine in "this case would in effect to compel the grant to re- "main a mortgage without power to foreclose the "mortgage against the government, inasmuch as "the government stands upon its sovereignty, not

64 "acknowledging the rights of individuals to have "their action of law against it, only in cases where "provisions are made by special statutes.

"We think the petition in this case is entitled to "a confirmation, and a decree will be entered "accordingly.

"Filed in office July 3, 1855.

By GEO. FISHER, *Sec'y.*"

"EULOGIO DE CELIS, } *v.* } No. 378.
THE UNITED STATES, }

"DECREE OF CONFIRMATION.

65 "In this case on hearing the proofs and alle- "gations, it is adjudged by the commission that the "claim of the said petitioner is valid, and it is there- "fore decreed that his application for a confirma- "tion thereof be allowed.

"The land of which confirmation is hereby given "is called the ex-Mission of San Fernando, situate "in the county of Los Angeles, and to be located as "the boundaries are known and recognized on the "17th day of June, 1846. Bounded on the north 'by the rancho called San Francisco, on the west by "the mountains Santa Susanna, on the east by the 66 "ranch Miguel and on the south by the Porte "Suelo.

"R. AUG. THOMPSON, } *Commissioners.*
S. B. FARWELL, }

"Filed in office July 3rd, 1855. GEO. FISHER, *Sec'y.*"

And this defendant is informed and believes, and alleges on her information and belief, that the above and foregoing is the only grant or semblance of a grant under or through which said Eulogio de Celis, or said Eulogio F. de Celis, or either of them, or either of their grantees or successors in interest, could have derived or ever claimed to derive title to said ex-Mission of San Fernando lands, or to any of

67 the lands in controversy in this suit; that the basis and the only basis for the said patent or alleged patent issued by the United States of America on the said 8th day of January, 1873, or at any time for the "Rancho ex-Mission de San Fernando" in favor of Eulogio de Celis, or in favor of any grantor or predecessor in interest of plaintiff, was and is the aforesaid document filed with the aforesaid notice and petition of said Eulogio de Celis, purporting to be a deed of grant for a money consideration, made by said Governor Pio Pico to said Eulogio de Celis. And this defendant says she is informed and be-
68 lieves, and alleges on information and belief, that said alleged deed of grant is and always was utterly void and of no effect, and conveyed no title to said alleged grantee—

I. Because, as appears on its face, it was a deed of sale whereby said Pio Pico, governor of California, attempted, for the consideration of $14,000, to grant the lands therein mentioned to said Eulogio de Celis, which act was *ultra vires*, unauthorized by and in violation of the laws of the republic of Mexico.

II. Because the lands so attempted to be granted
69 were lands embraced within and belonging to the Mission of San Fernando, and not legally subject to the granting power of said governor.

This defendant further says in this behalf that said "commissioners to ascertain and settle the private land claims in the state of California," never had any jurisdiction over the subject matter of said claim of said Eulogio de Celis, otherwise called Eulogio Celis, because *he* says that it was set out and appeared on the face of the notice and petition of said Eulogio Celis and accompanying documents, to wit, the alleged grant itself, that at the time of the making of said alleged grant, the lands embraced

70 therein were mission lands, and also that said so-called grant was in the nature of a sale for money, and that said grant was therefore without authority of law and void, and did not constitute a claim by virtue of any right or title derived from the Spanish or Mexican government.

And defendant says, that because of the facts so set out and shown in said notice and petition and accompanying documents so filed with said commissioners by said Eulogio de Celis, said commissioners were wholly without jurisdiction to adjudicate upon or to confirm said claim, and that their
71 said decree of confirmation thereof is and always was *ultra vires* and utterly void, and that all subsequent proceedings based thereon, including the survey and patenting of said lands by the United States government were and are wholly without authority of law and void.

IV.

Further answering in this behalf, this defendant says she is informed and believes and alleges on her information and belief, that said so-called grant does not and never did, either as originally made or as confirmed by said commissioners, embrace
72 any of the lands described in plaintiff's complaint, and now in controversy in this action. This defendant says that the said alleged patent issued on the said 8th day of January, 1873, in favor of said Eulogio de Celis, embraces or purports to embrace some twenty-six square leagues of land, about twice the amount originally claimed by said de Celis, and twice the amount embraced in said decree of confirmation made by said commissioners, and stretching far south of and beyond the boundaries designated in said original grant and in said decree of confirmation.

73 V.

Further answering in this behalf this defendant says she is informed and believes and alleges on her information and belief that several thousand acres of the land described by plaintiff in its complaint herein, and claimed by it in this action are outside of the limits of said patent and are clearly the property of the United States government, even if said patent have any validity whatever.

VI.

Further answering, this defendant says she is informed and believes and alleges on information
74 and belief that there was never any actual survey made upon the ground corresponding with the courses and distances given, nor the natural objects and monuments referred to in said patent as determining and marking the boundaries thereof, nor at all; that many of the natural objects and monuments named in said patent as fixing its boundaries cannot and never could be found, while others, if ever intended as boundaries, are so far removed from the places assigned them in the surveyor's field notes and in the descriptive part of the patent that it is impossible to tell whether they are the
75 same therein referred to or not; wherefore this defendant is informed and believes, and alleges on her information and belief that said patent is invalid because of these its ambiguities, indefiniteness and uncertainties of description.

VII.

Defendant further answering on her information
& and belief denies that plaintiff derived or has any title to said lands in dispute or any part thereof through, under or by virtue of the said original grant or the decree of the United States land commissioners confirming the same, not only because the same were void, but because no part of said

76 lands in dispute are within the bounds of said grant or of said decree of confirmation.

VIII.

Further answering with reference to so much of the lands in controversy as lie within the seeming limits of the said patent, but not within the limits of said original grant, nor within the limits of the said decree of confirmation, the said defendant says that plaintiff has no title to the same, either through the operation of said patent or otherwise; that said patent, aside from its invalidity, was and is inoperative to pass title for the want of an accept-
77 ance by said Eulogio F. de Celis, administrator of the estate of said Eulogio de Celis, and invalid for want of an actual survey, and the lack of sufficiently definite and proper boundaries or other descriptions.

IX.

In answer to division No. III of plaintiff's said complaint, this defendant, on information and belief, and in view of the facts above stated, denies that on the second day of July, 1869, or at any other time subsequent to the final confirmation of said grant, or at all, the San Fernando Farm Homestead
78 Association acquired the legal title to or became then and there, or at all, the absolute owner in fee, or otherwise, of an undivided one-half or any part whatever of said Rancho ex-Mission de San Fernando.

X.

Further answering as to paragraph or division No. IV of plaintiff's said complaint, this defendant does not deny that a suit for and decree of partition was had setting apart to the said "San Fernando Homestead Association" certain lands therein described, but defendant on her information and belief, and because of the facts above stated, denies

79 that all or any of the parties to said suit, either at the date thereof or before or since said date, ever had or now have a valid title to said lands so set apart, or any part thereof. And defendant further denies on her information and belief, that all, or anywise near all, the land so set apart and decreed to said "San Fernando Homestead Association" now lies or ever did lie within the patent boundaries of said San Fernando rancho.

XI.

In answer to division V of plaintiff's complaint, without denying that plaintiff succeeded to whatever
80 right, title and interest the said San Fernando Farm Homestead Association had in said lands, defendant does deny on information and belief that said association ever had any valid right, title or interest in or to said described lands to which plaintiff did or could succeed or at all, and denies that plaintiff is or ever was the owner in fee or entitled to the possession of all or any part thereof.

XII.

In answer to division VI of plaintiff's complaint, this defendant says she is informed and believes and avers on her information and belief that it is not
81 true that plaintiff's predecessors in interest and plaintiff, or that any, either or all of them have, ever since the alleged grant of said rancho by the Mexican government on the 17th day of June, 1846, and until the date in plaintiff's complaint thereinafter specified, or during any portion of said period, been in the open, notorious, exclusive or continuous adverse possession of said lands or any portion thereof, and particularly that which now is or was at the time of commencing this action claimed or occupied by this defendant. Instead of the plaintiff and its predecessors asserting title to said lands under said grant, this defendant is informed and

82 believes and alleges on her information and belief that for a long time after said grant was issued, plaintiff's predecessors in interest repudiated and denied all right and title to the whole of said lands in controversy, and up to a date long after the confirmation of said grant by the United States land commissioners neither the plaintiff nor any of its predecessors in interest ever claimed or pretended to believe that said grant embraced any of the land now in controversy in this suit.

XIII.

In answer to division VII of plaintiff's complaint,
83 this defendant says she has no information or belief on the subject sufficient to enable her to either affirm or deny plaintiff's allegation to the effect that "the United States Government has always and does now recognize plaintiff's title under the patent to the lands or any of the lands in controversy," and therefore this defendant denies the truth of said allegation.

XIV.

As regards the several allegations set forth in division No. VIII of plaintiff's complaint herein, this defendant says she has no information or belief
84 on the subject sufficient to enable her to answer said allegations or either of them; wherefore she denies that for the past twenty years or any number of years or at all, plaintiff and its predecessors in interest, the San Fernando Farm Homestead Association or either of them has been continually or uninterruptedly engaged in farming and pasturing or in farming or pasturing any part of said lands, and denies that either plaintiff or its said predecessors in interest or both of them together or each successively have been continuously or at all engaged in farming and pasturing or in farming or pasturing the whole of said lands for the last twenty

85 years or any part thereof. And she denies that plaintiff and its said predecessor in interest or either of them ever annually or at all, produced on said land a large crop of grain, principally wheat, or other grain; denies that plaintiff at great expense or at all erected numerous farming stations on said land; denies that plaintiff or its predecessor in interest ever reduced said land or any considerable portion thereof to a high state of cultivation; denies that plaintiff now has or ever did have on said premises 600 head of work horses and mules, or any
86 other large number of the same; or any number of full and complete sets of machinery, and denies that plaintiff or its predecessor in interest either or both ever built, conducted or maintained either for ten years or at all at the city of Los Angeles or elsewhere the largest flouring mill in Southern California.

XV.

As regards the allegations contained in division IX of plaintiff's complaint and hereinafter negatived, this defendant says that she has no information or belief on the subject sufficient to enable her to answer said allegations or either of them, where-
87 fore she denies the plaintiff has always or at all been careful to keep out, or that it has in fact wholly excluded all grain seeds other than wheat off of and from the wheat-bearing lands on said rancho, upon which lands this defendant has entered, and denies that if rye, oats, barley, cheat or seeds other than wheat are once introduced into said lands their value will be greatly impaired for wheat raising, and denies that the introduction of such foreign spurious grains will necessitate the outlay of large sums of money, or any considerable sum of money by plaintiff to eradicate the same therefrom; and denies that the injury to plaintiff thereby caused

88 will be irreparable; and denies that to sufficiently produce wheat on said land, or that to use the same with profit the soil must be kept free from the seed of all such foreign grains or any of them; and denies that the placing of any seed or grain other than wheat upon said premises will injure said lands or plaintiff's inheritance therein.

XVI.

For answer to the allegations contained in division XII of plaintiff's complaint, defendant, on information and belief, denies that while plaintiff was the owner, or entitled to the possession of said lands,
89 this defendant, on the 28th day of October, 1891, or at all, unlawfully entered into the possession of said premises, or any part thereof, or ousted the plaintiff therefrom, and denies that she now does, or did at the time of the commencement of this suit, unlawfully withold the possession thereof from plaintiff to its damage in the sum of five thousand dollars, or any other sum. Defendant admits that on or about said 28th day of October, 1891, she entered upon a claim of one hundred and sixty acres of land, and no more, of the lands claimed by plaintiff in this action, but outside of the limits of said alleged
90 grant, believing them to be public lands of the United States, of which she actually occupied a part, claiming and intending to hold said one hundred and sixty acres of said lands and to perfect her title thereto under the homestead laws of the United States. Defendant says that at the time of said entry upon said lands, she was and still is a citizen of the United States over 21 years of age, a qualified homesteader, and that her entry and settlement on said land was made in good faith as such homesteader, with the intention of complying with all the requirements of the United States homestead laws; that in pursuance of said intention, to so home-

91 stead said 160 acres of said land, this defendant, to wit, then and there duly tendered in due form her declaration of homestead thereon, for filing, to the register and receiver of the United States land office for the district of Los Angeles, California, within which said district said land is located, together with the proper fees for the same; that the said lands so entered upon by her are within the boundaries of the lands claimed by plaintiff in its complaint herein; but this defendant denies on her information and belief that said lands, or any part thereof, so claimed by this defendant, are within
92 the boundaries of the San Fernando ex-Mission grant, as claimed by plaintiff to have been originally granted and finally confirmed to Eulogio de Celis; and denies on information and belief that plaintiff now has or ever had a valid title thereto, or to any part thereof. Defendant says that her said claim and occupancy were and are her own separate and individual claim and occupancy, not a joint nor a common claim or occupancy with that of any of *his* co-defendants herein; wherefore, this defendant says that she has been and is improperly joined with her co-defendants, and said co-defendants have been and
93 are improperly joined with this defendant in this action. Defendant denies that she ever entered upon or claimed ony other portion of the premises described in plaintiff's complaint than as above stated. And defendant denies that by the alleged acts of this defendant, or any acts of hers, plaintiff has been damaged in the said sum of $5000, or in any other sum. Defendant says it is not true that she has no interest in the said 160 acres; as an actual settler thereon, she asserts a right to occupy and complete her title thereto under the homestead laws of the United States.

94 XVII.

As regards plaintiff's allegation of ouster, as set forth in his said complaint, this defendant says that, at the time of his entry on said 160 acres, the same and every part thereof was open, unenclosed land, and that as to whether or not plaintiff then or ever had such a possession of said premises so entered upon and occupied by this defendant as to make said entry and occupancy constitute an ouster of plaintiff, this defendant has no information or belief on the subject sufficient to enable her to answer said allegation; wherefore, she denies that
95 at the time alleged, or at any other time, this defendant ever ousted plaintiff from the whole or any part of the said land, or any part of the land described in the plaintiff's complaint.

XVIII.

In answer to division XIII of plaintiff's complaint, this defendant denies that she either individually or in conjunction with all or any of her co-defendants herein ever set out or participated in setting out camp fires, or any camp fire, on said lands, or any of them, which have destroyed fifteen hundred acres, or any number of acres or any frac-
96 tion of an acre, of valuable pasturage, or endangered the buildings or warehouses of plaintiff, or any of them; or that she has ever threatened to continue to light said fires to burn off or wholly destroy further quantities of plaintiff's pasturage or stubble, or to further endanger said buildings or warehouses of plaintiff. And denies that this defendant, either individually or in conjunction with others, is or ever was, with either animals or wagons, trampling down or consuming valuable stubble or pasturage of plaintiff. This defendant does not deny that she fed whole barley to her animals on said lands, but she avers on her information and belief that said

97 lands do not and never did belong to plaintiff. This defendant denies that, either individually or in connection with others, she ever threatened to take possession of plaintiff's buildings, or any of them.

XIX.

In answer to division XIV of plaintiff's complaint this defendant says, she has no information and belief on the subject sufficient to enable her to answer as to what plaintiff *believes* or is informed concerning defendant's insolvency and she therefore denies that plaintiff is informed or believes that this defendant is insolvent or unable to respond in
98 damages herein, as set out in said complaint.

XX.

In answer to division XV of plaintiff's complaint, this defendant says she is informed and believes and alleges, that it is not true that the value of the rents, issues and profits of the said premises from the 28th day of October, 1891, and whereby plaintiff has been excluded therefrom by this defendant or by any and all of said defendants, is the sum of five thousand dollars. Said defendant says she has no information or belief on the subject sufficient to enable her to answer what if any, was the value of the rents,
99 issues and profits of said premises from the 28th day of October, 1891, and whereby plaintiff has been excluded therefrom by defendants or any or either of them, wherefore this defendant denies that said value was or is, the sum of five thousand dollars, or any sum whatever.

WHEREFORE, this defendant demands a separate trial herein, and prays to go hence with her costs of suit.

Z. MONTGOMERY, J. P. MONTGOMERY &
R. L. HORTON,

Attys. for Defendant.

Duly verified.
Endorsed: Filed Nov. 8, 1894.

100 [TITLE OF COURT AND CAUSE.]

STIPULATION.

It is hereby stipulated by plaintiff that the amended portion of plaintiff complaint be denied and treated in all respects as denied by defendants' verified amended answer herein.

S. M. WHITE AND
GRAVES, O'MELVENY & SHANKLAND,
Attys. for Plff.

Endorsed: Filed April 2, 1895.

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101 [TITLE OF COURT AND CAUSE.]

VERDICT.

We, the jury in the above entitled action, find for the plaintiff and against the following named defendants in said action, to wit: Joseph Mazet, F. M. Culp, R. J. Tarbell, I. B. Cox, Rose D. Mosher, Henry C. Vincent; John J. Shore and Edwin G. Carter, for the possession of the premises described in plaintiff's complaint.

J. F. POWELL, *Foreman.*

Endorsed: Filed April 6th, 1895.

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102 [TITLE OF COURT AND CAUSE.]

JUDGMENT.

This cause came on to be tried on Tuesday, the 2nd day of April, *A. D.* 1895, before the court sitting with a jury, Messrs. Graves, O'Melveny & Shankland and S. M. White appearing for the plaintiff, Messrs. Zach and J. P. Montgomery and R. L. Horton appearing for the defendants, Rose D. Mosher, F. M. Culp, I. B. Cox, Joseph Mazet, John J. Shore, Henry C. Vincent, R. J. Tarbell and Edwin G. Carter, and the following named defendants, to wit: C. S. Thompson, John Richards, H. Kryster, Mrs. Lizzie McCafferty, George Lewis, Frank Arballo, William Scaif, E. P. Haskell, T. C. Boardman, M. B. Andrews, Alex-

103 ander Bell, E. N. Ellsworth, John F. Sawtelle, W. E. Chase, N. Haag, E. Dibble, H. Gilliland, Bertha Shore, Patience Spencer, Andreas Chavez, Clara Dennison, J. E. Liebhart and Eliza Vincent, having heretofore appeared in said action by either Messrs. Pope & Bleeker or John T. Moore, failing to appear in person or by attorney at the trial of said action, and no one appearing for the said defendants, or either of them, at said trial; and the said cause having been regularly set for trial on said second day of April, *A. D.* 1895, thereupon a jury of twelve persons was regularly impanneled and sworn to try said
104 action, and the trial of said action commenced;

Thereupon evidence, oral and documentary, was introduced by the respective parties appearing at said trial, and the evidence all being in, and the plaintiff and defendants having respectively rested in said case, the plaintiff in said action moved the court to instruct the jury to return a verdict as to the eight defendants represented by said Montgomerys and Horton, which said motion the court granted, and thereupon said jury retired and returned the following verdict, on Saturday, April 6th, 1895, to wit:

105 In the Superior Court of the county of Los Angeles, state of California.

Los Angeles Farming & Milling Company, plaintiff, *vs.* C. S. Thompson, *et al.*, defendants.

We, the jury in the above entitled action, find for the plaintiff, and against the following named defendants in said action, to wit: Joseph Mazet, F. M. Culp, R. J. Tarbell, I. B. Cox, Rose D. Mosher, Henry C. Vincent, John J. Shore and Edwin G. Carter, for the possession of the premises described in plaintiff's complaint.

J. F. Powell, *Foreman.*

106 Which said verdict was signed by the foreman; and the said defendants represented by Messrs. Montgomery and Horton demanding that the said jury be polled, the said jury were polled, and answering to their names each of the said jury stated that the said verdict was his, and thereupon said verdict was duly recorded by the clerk of said court;

Now, therefore, in consideration of the premises, it is hereby ordered, adjudged and decreed, that the plaintiff herein, the Los Angeles Farming and Milling Company, a corporation, do have and recover of and from the defendants Joseph Mazet, F. M. Culp,
107 R. J. Tarbell, I. B. Cox, Rose D. Mosher, Henry C. Vincent, John J. Shore, Edwin G. Carter, C. S. Thompson, John Richards, H. Kryster, Mrs. Lizzie McCafferty, George Lewis, Frank Arballo, William Scaif, E. P. Haskell, T. C. Boardman, M. B. Andrews, Alexander Bell, E. N. Ellsworth, John F. Sawtelle, W. E. Chase, N. Huag, E. Dibble, H. Gilliland, Bertha Shore, Patience Spencer, Andreas Chavez, Clara Dennison, J. E. Liebhart and Eliza Vincent, possession of that certain tract of land situated in the county of Los Angeles, state of California, and being that portion of the Rancho ex-Mission de San Fer-
108 nando described as follows, to wit:

Beginning at the live oak tree 36 inches in diameter, station 2 of the official survey of the said Rancho ex-Mission de San Fernando, and station 3 of the final and official survey of Rancho Providencia, and run thence north 8° W., along the line of the official survey of the said Rancho ex-Mission San Fernando, and at 190.27 chains intersect the line between townships 1 and 2 north, range 14 west of the San Bernardino meridian, 4.93 chains west of corner to sections 4, 5, 32 and 33, 271.30 chains to a sycamore post in rock mound marked H. A., 2 station; thence west and at 143.84 chains to the corner

109 to sections 25, 30, 31 and 36, on line between ranges
14 and 15 west, township 2 north, H. A., 3 station;
thence S., 89° 36′ W., 476.64 chains to stake, the cor-
ner to sections 25, 30, 31 and 36, on line between
ranges 15 and 16 west, township 2 north, H. A., 4
station; thence S., 89° 33′ W., on line parallel to the
south boundary of township 2 north, range 16 west,
476.10 chains to post, the corner to sections 25, 30,
31 and 36, on line between ranges 16 and 17 west,
township 2 north, H. A., 5 station; thence west on
line parallel to the south boundary of township 2
110 north, range 17 west, and at 206.71 chains intersect
the western exterior boundary of Rancho ex-Mission
San Fernando, H. A., 6 station; thence S., 12½° W.
along the line of the official survey of said Rancho
ex-Mission San Fernando, and at 104.92 chains to
the forked white oak tree, 25 inches in diameter,
station 34 of the official survey of said Rancho ex-
Mission San Fernando, and station 4 of the official
survey of the Rancho El Escorpion, H. A., 7 station;
thence S., 84° E., 105.34 chains to red oak post, in a
mound of stones marked S. F., 35 station, and sta-
tion 3, and northeast corner of Rancho El Escorpion,
H. A., 8 station; thence S., 6° W., 105.43 chains to a
111 redwood post marked S. F., 36 station, and station 2,
and southeast corner Rancho El Escorpion, H. A., 9
station; thence N., 84° W., 105.34 chains to a black
oak stake marked S. F., station 37, in mound of rock
and earth, being station 1, and southwest corner of
Rancho El Escorpion station, at the east base of the
ridge called Sierra Santa Susanna, H. A., 10 station;
thence S., 32° 37′ E., 161.51 chains to a live oak tree
45 inches in diameter, marked on the west side with
a D X S. F., 38 station, and H. A., 11 station;
thence S., 36¼° E., 44.96 chains, intersect offset base
line, 133.35 chains west of corner, 58 chains south
of corner to sections 13, 18, 19 and 24, on line

112 between ranges 16 and 17 west, township 1 north, S. B. M., 76.70 chains, to blazed white oak tree, 28 inches in diameter, station 39, S. F., H. A., 12 station; thence N., 58½° E., 25.00 chains to live oak tree 35 inches in diameter, S. F., 40 station, and H. A., 13 station; thence N., 89° E., 39.00 chains to a brown sandstone rock, 24x9x5 inches, S. F., 41 station, H. A., 14 station; thence S., 65¾° E., 272.00 chains to a sandstone rock 12x12x10 inches, marked S. F., 42 station, H. A., 15 station; thence N., 87½° E., 327.97 chains to a large sandstone rock 24x16x8 inches, in an irregular mound of rocks on a very
113 high peak about 800 feet above the San Fernando valley, marked S. F. and S. F., 43 station, and H. A., 16 station; thence S., 87° E., 680.50 chains to a sandstone rock marked S. F., 44 station, buried in earth with a face 14 inches in diameter cropping out of same, H. A., 17 station; thence N., 7¼° E., 61.34 chains to stake in stone mound, S. F., 1 station, and station 4, La Providencia, H. A., 18 station; thence N., 20½° W., along the line of the official survey of the Rancho San Fernando, and at 159.43 chains, intersecting offset to township line in township 1 north, range 14 west, of the San Bernardino merid-
114 ian, 35.95 chains east of corner to sections 16, 17, 20 and 21, 210.68 chains to live oak tree, 36 inches in diameter, station 2, San Fernando station No. 3, La Providencia, and H. A., station 1, point of beginning, containing 64,011.53 acres.

Saving and excepting therefrom, however, that portion thereof known as the Rancho El Encino, containing 4460.73 acres of land, which lies wholly within the said portion of said Rancho ex-Mission de San Fernando above described, leaving a total acreage of 59,550.81 acres of said rancho, all of which lies within the patent boundaries of said Rancho San Fernando.

115 Also excepting the eastern 12,000 acres of said tract of land, being that portion of said larger tract lying east of a north and south line so drawn as to cut off 12,000 acres on the east end thereof, which the plaintiff herein has heretofore sold.

And that said defendants, and each of them, be ejected therefrom, and also that said defendants, and each of them, be, and they hereby are perpetually enjoined from committing any waste thereon, and that plaintiff have and recover of and from said defendants its costs, taxed at $321.60.

Done in open court this 8 day of April, *A. D.*
116 1895.

WALTER VAN DYKE,
Judge.

Endorsed: Filed Apr. 8, 1895.

Docketed Apr. 9, 1895; entered Apr. 8, 1895, book 51, page 169.

[TITLE OF COURT AND CAUSE.]

STATEMENT ON MOTION FOR NEW TRIAL.

This cause came on for trial on the 2nd day of April, 1895, Stephen M. White, Esq., and Messrs.
117 Graves, O'Melveny & Shanklin appearing for the plaintiff, and Messrs. Zack and J. P. Montgomery and R. L. Horton, appearing for the defendants Henry C. Vincent, John J. Shore, Reuben J. Tarbell, Joe Mazet, Edwin G. Carter, F. M. Culp and I. B. Cox, no appearance being made for any of the other parties defendant to said action. Thereupon a jury was impanelled and sworn to try the said cause, and plaintiffs thereupon introduced documentary evidence, including a patent from the United States government to Eulogio de Celis, which said patent is in the words and figures following, to wit:

118 THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas, it appears from a duly authenticated transcript filed in the general land office of the United States, that pursuant to the provisions of the act of congress, approved the third day of March, one thousand eight hundred and fifty one, entitled "An act to ascertain and settle the private land claims in the state of California," Eulogio de Celis, as claimant, filed his petition on the 7th day of October, 1852, with the commissioners to ascertain and settle the private land claims in the state of
119 California, sitting as a board in the city of Los Angeles, in which petition he claimed the confirmation of his title to a tract of land known by the name of Mission of San Fernando containing fourteen square leagues situated in the county of Los Angeles, and state aforesaid, said claim being founded on a Mexican deed of grant to the petitioner made on the 17th day of June, 1846, by Pio Pico, then constitutional governor of the department of the Californias.

And whereas, the board of land commissioners aforesaid on the 3rd day of July, 1855, rendered a
120 decree of confirmation in favor of the claimant, which decree or decision having been taken by appeal to the district court of the United States for the southern district of California, and the attorney-general of the United States having given notice that appeal would not be prosecuted in the cause entitled "Eulogio de Celis, appellee *vs.* The United States, appellant," the said District Court, on the 15th day of March, 1858, "ordered that said appeal be dismissed and that said appellee have leave to proceed under the decree of the said commissioners in his favor as a final decree" whereby the proceedings of court upon title became final.

121 And, whereas, it further appears that the following proceedings were had in this cause in the matter of survey and location in the District Court of the United States in and for the southern district of California, as follows, to wit:

"Eulogio Celis *vs.* The United States and Alex. "Bell, Intervenor—on return of survey of the rancho "of the ex-Mission of San Fernando."

"Now on this day this cause coming on to be "heard on the report of J. J. Warner, Henry D. "Barrows and Mathew Keller, referees, heretofore "agreed upon by the parties hereto, and appointed
122 "by the court, and the said report having been "duly filed, and examined and understood by the "court, it is hereby ordered, adjudged and decreed, "that the eastern boundary line of the survey of the "said ex-Mission of San Fernando bounding on the "Ranchos of La Providencia and Cahuenga, as here- "tofore returned to this court, be and the same is "hereby corrected and amended in accordance with "the report of said referees and it is decreed to be as "follows, to wit: Commencing at an oak tree "marked S. F. S. 2" being station 2 of the eastern "boundary line of the ex-Mission of San Fernando
123 "as surveyed by H. Hancock in 1858, and approved "by Surveyor-General Mandeville on the 5th day of "February, 1861, and being the northwest corner of "the Ranchos La Providencia and Cahuenga, run- "ning thence in a right line drawn from said oak "tree south, 20½ east, passing through the center of "the Laguna about ten chains westerly of the house "of Cyrus Lyons, and being one league (5000 varas) "in length.

"Thus done and signed in open court this 14th "day of Aug. 1865.

"FLETCHER M. HAIGHT,
"*Judge U. S. Dist. Ct. S. Dist. Cala.*"

124 And, whereas, the surveyor-general of California made and returned to the District Court of the United States for the district of California, an amended survey of the Rancho ex-Mission San Fernando, pursuant to the decree aforesaid; and whereas said District Court erroneously assumed jurisdiction over said re-survey and amended and approved the same, reserving therefrom the Rancho "El Encino," confirmed and patented January 8th, 1873, to Vicente de la Ossa *et al.*, and the eight tracts of land known as the Mission of San Fernando confirmed and patented May 31, 1864, to Joseph S.
125 Alemany, Bishop of Monterey, and to his successors, which reservations are satisfactory to the parties legally entitled to this patent as appears by their acceptance of these presents as a good and valid patent for the lands confirmed as aforesaid; and whereas the plat hereunto annexed in all respects conforms to the aforesaid decree on survey made on the 14th of August, 1865, by the U. S. District Court aforesaid, except that the Rancho "El Encino" patented January 8th, 1873, and the eight tracts of land known as the Mission of San Fernando, patented May 31, 1864, to Joseph S. Alemany,
126 Bishop of Monterey, and to his successors, are reserved therefrom.

And whereas, under the 13th section of said Act of 3d March, 1851, and the supplemental legislation and in accordance with the proceedings had pursuant to said act and supplemental legislation there has been deposited in the general land office a return with a certificate and plat of the survey of the said claim confirmed as aforesaid, authenticated by the signature of the United States surveyor general for the state of California, which certificate and plat are in the words and figures as follows, to wit:

127 "U. S. SURVEYOR GENERAL'S OFFICE,
"SAN FRANCISCO, CAL.,
"January 21st, 1871.

"Under and by virtue of the provisions of the "13th section of the act of congress of the third of "March, 1851, entitled 'An act to ascertain and "settle the private land claims in the state of Cali- "fornia,' and of the 12th section of the act of "congress approved on the 31st of August, 1852, "entitled 'An act making appropriations for the "civil and diplomatic expenses of the government "for the year ending the 30th of June, 1853, and for
128 "other purposes' and whereas the U. S. District "Court for the southern district of California "rendered a decision whereby it recognized and "confirmed the title and claim of Eulogio de Celis "to the tract of land designated as ex-Mission de "San Fernando, in Los Angeles county by vacating "the appeal from the decision of the board of U. S. "land commissioners, thereby rendering said deci- "sion final as appears from the certified copy of the "final decree of the said District Court a copy of "which is hereto annexed. The said tract of land "was surveyed in conformity to the grant thereof
129 "and the said decision, and I hereby certify that the "accompanying map is a true and accurate plat of "the said tract of land, as appears by the field notes "of the survey thereof, made by Henry Hancock "deputy suveyor under the directions of this office, "which having been examined and approved remain "of record therein.

"The boundaries of said tract as finally corrected "by the U. S. District Court are described as follows:

"Beginning at a post marked 'P. No. 4' in rock "mound on the east slope of a hill near the foot of "same at the southwest corner of the Providencia "rancho from which post an elder tree five inches

130 "in diameter bears south, twenty-three degrees and "thirty minutes west, distant one hundred and "three links, and a live oak tree ten inches in "diameter bears south, sixty-eight degrees east, "distant three hundred and seven links.

"Thence according to the true meridian the "variation of the magnetic needle being fourteen "degrees and fifteen minutes east, along the western "boundary of the Rancho Providencia north, twenty "degrees thirty minutes west, at eight chains and "sixty one links, crosses gulch course southeast and "ascends, at thirteen chains and eighty-five links to
131 "top of hill and descends, at twenty-four chains and "eighty-five links to a stake on hill side, at thirty-"two chains and eighteen links to foot of hills; "thence crossing the bottom of Los Angeles river, "at thirty-eight chains and eighteen links across "Los Angeles river sixty links wide course east, at "forty-three chains and sixty-eight links ascends "fifteen feet to table land. At forty-five chains and "sixty-eight links the ruins of Cyrus Lyons house "bear east distant six chains and seventy-one links. "At fifty-five chains and sixty-eight links descends "from table land. At fifty-six chains and twenty-
132 "one links to laguna. At forty-seven chains and "fifty-two links to center of laguna. At fifty-seven "chains and eighty-three links across laguna. At "sixty chains and sixty-eight links ranch house "bears north, seventy-eight degrees east. At one "hundred and ten chains and sixty-eight links "ranch house bears south, fifty-nine degrees east. At "one hundred and thirteen chains and eighteen "links to dry arroyo course southeast. At one "hundred and forty-three chains and sixty-eight links "across dry arroyo course southeast. At one "hundred and fifty-nine chains and ninety links "intersects offset to township line in township one

133 "north, range fourteen west of San Bernardino "meridian thirty-six chains and nine links east of "corner to sections sixteen, seventeen, twenty and "twenty-one. At one hundred and sixty-one chains "and sixty-eight links to dry arroyo course south- "east at one hundred and sixty-seven chains and "eighteen links across dry arroyo and ascends fifteen "feet. Two hundred and ten chains and sixty-eight "links to a live oak tree thirty-six inches in "diameter marked 'S. F. 2' and 'P. No. 3' station "at the northwest corner of the Rancho 'Provi-
134 "dencia.'

"Thence according to the true meridian the "variation of the magnatic needle being thirteen "degrees and thirty minutes east, along the boundary "of the Rancho 'San Rafael' north, eight degrees "west, at thirty-five chains enters chaparral, at two "hundred and thirty-three chains across an old "trail course north, fifty-four degrees west, three "hundred and eighty-nine chains to the south base "of low hills, course north, sixty degrees west, three "hundred and ninety-three chains to a corner of the "Ranchos 'San Rafael' and 'Tujunga.'

"Thence leaving the boundary of the 'San Rafael'
135 "rancho and along the boundary of the 'Tejunga' "rancho at four hundred and forty-four chains and "fifty links across road to Tujunga course north, "fifty-six degrees east. At five hundred and forty- "three chains across road course north, five degrees "east, and leaves hills. At five hundred and sixty "chains crosses road course north, ten degrees east. "six hundred and twenty-seven chains to a post "marked 'S. F. 3' and a charred stake in mound, sta- "tion at the mouth of a cañada on the south base of "the 'Sierra Madre' or San Fernando mountains "from which post a sycamore twelve inches in diam- "eter bears south, fifty-one degrees east, distant one

136 "hundred and fifty links and a sycamore ten inches "in diameter bears north, thirteen degrees thirty "minutes west, distant three hundred and eighty-five "links.

"Thence leaving the boundary of the 'Tujunga' "rancho and along the south base of the mountains, "south eighty-one degrees west, ten chains and fifty "links to a stake station, thence north 82° 30′ west, "twenty-one chains and fifty links to a stake, station.

"Thence north, seventy-four degrees thirty min- "utes west, sixty-four chains to a stake station. "Thence south, eighty-two degrees west, at three
137 "chains and seventy-six links intersects line between "ranges fourteen and fifteen west, township two "north, one chain and seventy-seven links north of "quarter section corner on the west boundary of "section six, township two north of range fourteen "west forty-nine chains and fifty links to a stake "station.

"Thence north, forty-one degrees west, twenty-two "chains and fifty links to a stake station.

"Thence north, twenty degrees west, twelve chains "to a stake, station.

"Thence north, three degrees west, fifty-three
138 "chains and fifty links to a stake station.

"Thence north, fifty degrees east, six chains to a "stake station.

"Thence north, sixteen degrees thirty minutes, east "one hundred and five chains to a post marked 'S. "F. 12' in rock mound station on the west slope of a "hill covered with chapparel about five chains east "of the mouth of a cañon ranging north thirteen "degrees west.

"Thence north, sixty-six degrees west, eighty "chains to a stake on the top of the southwest slope "of a small spur of the mountains station, from which

"the buildings of the ex-Mission of San Fernando
"bear south, thirty-four degrees west.

"Thence south, eighty-six degrees west. At eighty
"chains the buildings above mentioned bear south,
"twenty degrees west, two hundred and seventy-six
"chains and fifty links to a a stake station.

"Thence north, fifty-four degrees thirty minutes
"west, one hundred chains to the road from Los
"Angeles over the San Fernando hill to Fort Tejon,
"said road running up the center of a cañada about
"two miles long and seven chains wide course north
"fifty degrees west, one hundred and thirty-two
"chains to a post marked 'S. F. 15' in the cañada,
"station, from which an oak tree eight inches in
"diameter bears south, fifty degrees thirty minutes
"west, distant one hundred and fifty-nine links.

"Thence south, forty-seven degrees forty-five min-
"utes west, one hundred and eighty-two chains to a
"black walnut tree five inches in diameter marked S
"F 16', station, on the northern slope of a high hill
"covered with wild oats.

"Thence north, seventy-five degrees thirty min-
"utes west, one hundred and ninety-four chains to
"an oak tree twenty inches in diameter marked 'S
"F 17, station on the mountain.

"Thence south seventy-five degrees west, twenty-
"six chains and fifty links to a post marked S F 18'
"in rock mound, station and a station of the coast
"survey.

"Thence south, thirty-eight degrees west, fifteen
"chains to a stake station.

"Thence south, four degrees forty-five minutes
"west, sixty-two chains and fifty links to a stake sta-
"tion.

"Thence south, seventy-seven degrees thirty min-
"utes west. At 14 chains a spring of water bears
"south thirty-five degrees east, distant two hundred

142 "links. At fifty-one chains crosses a stream of "water eight links wide course south, twelve degrees "thirty minutes west, said stream runs through a "cañon about thirty links wide, sixty chains to a "stake station.

"Thence south, thirteen degrees thirty minutes "west. At eighty-four chains across a stream of "water eight links wide course south, eight degrees "west, eighty-eight chains to a stake station.

"Thence south, seven degrees east. At four chains "and fifty links across a stream of water eight links "wide course south, thirty-five degrees west. At
143 "seventeen chains across a stream of water eight "links wide course south, forty-two degrees east twen- "ty-seven chains to a stake station

"Thence south, eighty-three degrees west, one "chain to a stake station.

"Thence south, seven degrees east, ten chains and "fifty links to a stake station.

"Thence south, twenty-four degrees east, two "chains and fifty links to a stake station.

"Thence south, fifteen degrees west, five chains to "a stake station.

"Thence south, five degrees west, one chain to a
144 "stake, station.

"Thence south, twenty-two degrees, thirty minutes "west, seven chains to a stake station.

"Thence south, forty-one degrees west, six chains "to a stake, station.

"Thence south, thirty-eight degrees west, two hun- "dred and seventy-two chains to a dead oak tree "eighteen inches in diameter marked S. F. 31' sta- "tion at the southeast base of the Santa Susanna "mountains.

"Thence south, thirty-nine degrees west, eight "chains and thirty links to a stake station.

"Thence north, eighty-five degrees thirty min-

145 "utes west, seventy-two chains to a large sandstone "rock, nine feet long, two feet thick and three feet "high, imbedded in earth marked 'S. F. 33' station. "At the easterly base of the Santa Susanna "mountains, from which a live oak tree ten inches "in diameter bears south, seventy-four degrees "thirty minutes east, distant four chains and fifty "links.

"Thence south, twelve degrees thirty minutes west, "one hundred and eighty-two chains to a stake at "intersection with the south boundary of town- "ship two north, of range seventeen west, twenty-five
146 "chains west of corner to sections three, four, thirty- "three and thirty-four—two hundred and three "chains to a live oak tree, twenty-four inches in "diameter, marked 'S. F. 34' station, from which "an oak tree eighteen inches in diameter bears south, "seven degrees west, distant one chain and sixty- "eight links.

"Thence along the northern boundary of 'El "'Escorpion' (a tract confirmed to the Indian Urbano "and others) south, eighty-four degrees east, one "hundred and five chains and thirty-four links to a "post marked 'S. F. 35' and charred stake in mound,
147 "station, from which a white oak, forty inches in "diameter, bears south, five degrees forty-five "minutes east, distant fourteen chains and fifty-five "links.

"Thence along the east boundary of El Escorpion, "south, six degrees west, one hundred and five "chains and thirty-four links to a post marked S. F. "36, in mound, station from which an oak tree "twenty-four inches in diameter bears south, thirty- "five degrees thirty minutes west, distant nine "chains and sixty links; and an oak tree fifteen "inches in diameter, bears south, thirty-one degrees "west, distant ten chains.

148 "Thence north, eighty-four degrees west, one hun-
"dred and five chains and thirty-four links to a post
"marked 'S. F. 37,' in stone mound station, and a
"corner of the 'Las Virgines' rancho, at the east
"base of the Santa Susanna mountains.

"Thence along the boundary of the Rancho Las
"Virgines south, thirty-three degrees thirty minutes
"east, one hundred and fifty-eight chains to a live
"oak tree, forty inches in diameter, marked with a
"cross 'D' and 'S. F. 38' station, and an old boun-
"dary mark, on the north side of the road leading to
"Santa Barbara, and west side of a dry gully, twenty
149 "links wide, course northwest.

"Thence south, fifty-three degrees thirty minutes
"east, ninety-two chains to a blazed live oak tree,
"eighteen inches in diameter, station at the east side
"of the Cañada de las Calabasas coming from the
"southwest.

"Thence north, fifty-eight degrees thirty minutes
"east, twenty-five chains to a live oak thirty inches
"in diameter, marked 'S. F. 40,' station.

"Thence north, eighty-nine degrees east, thirty-
"nine chains to a brown sandstone rock twenty
"inches long, eight inches wide and four inches
150 "thick, marked 'S. F. 41' in rock mound station, on
"the northwest slope of a low spur of the mountain
"to the south.

"Thence south, sixty-five degrees east, two hun-
"dred and seventy-two chains to a sandstone rock,
"twelve inches long, twelve inches wide and ten
"inches thick, marked 'S. F. 42,' station at a high
"point on the mountain.

"Thence north, eighty-four degrees east, three
"hundred and forty-five chains to an irregular
"mound of rocks on a high peak about five hundred
"feet above the San Fernando valley, station from
"which the quarter section corner between sections

151 "nineteen and twenty form townships one north,
"ranges fifteen and sixteen west, bears north twenty-
"eight degrees west, distant one hundred and eleven
"chains.

"Thence south, eighty-three degrees fifteen minutes
"east, six hundred and sixty-eight chains to a sand-
"stone rock buried in earth with a face fourteen
"inches in diameter marked 'U. S. 44' station, on
"the west side of the road from Los Angeles to San
"Fernando, course northwest, and summit of the
"Cahuenga Pass, and

"Thence over the northwest slope of the Cahuenga
152 "mountains north, twelve degrees thirty-seven
"minutes east, fifty-seven chains and seventy-nine
"links to the point of beginning, containing in all
"one hundred and twenty-one thousand, three hun-
"dred and ninety-six acres and thirteen hundredths
"of an acre, from which are to be deducted the
"areas of the following described tracts confirmed
"by the U. S. District Court to other confirmees,
"which tracts lie entirely in the area comprised by
"the boundaries heretofore described, namely, I.
" 'El Eucino' confirmed to Vicente de la Ossa *et al.*,
"the boundaries of which are described as follows:

153 "Beginning at a black walnut tree, twelve inches
"in diameter marked 'E. No. 1,' being one of a cluster
"of four black walnut trees, standing on the summit
"of a low isolated hill near the foot of the mountains,
"on the south side of the valley of San Fernando.

"Thence according to the true meridian, the vari-
"ation of the magnetic needle being fourteen degrees
"fifteen minutes east, descending from low hill
"north. At five chains enters the valley of San
"Fernando, at eighteen chains and fifty links,
"crosses old road from Santa Barbara to Los Angeles,
"course east and west. At twenty-seven chains and
"twenty-five links crosses stage road from Santa

154 "Barbara to Los Angeles, course northeast and "southwest. At sixty-five chains and thirty links, crosses dry gulch, course, southeast.

"At sixty-eight chains, crosses the Los Angeles "river fifty links wide, course south seventy-five "degrees east, two hundred and ten chains and "sixty-eight links to a post six feet long and six "inches in diameter marked 'E. No. 2' in mound of "earth with pits station in the plain of San Fernando.

"Thence over plain, west at sixty-nine chains "crosses road from San Fernando Mission to Encino "rancho, course north, twelve degrees east and
155 "south, twelve degrees west.

"At eighty chains enters sandy wash with heavy "growth of weeds, at one hundred and twenty-five "chains dry bed of arroyo, course south, five chains "wide. At one hundred and thirty-one chains and "twenty links intersects the line between ranges fif- "teen and sixteen west, townships one north, San Ber- "nardino base and meridian, fifteen chains and fif- "teen links south of corner to sections one, six, seven "and twelve, two hundred and ten chains and sixty- "eight links to a redwood post six feet long and six "inches square marked 'E No. 3' in mound of earth,
156 "station in the plain of San Fernando.

"Thence over plain south at thirty-two chains and "fifty links crosses the Los Angeles river thirty "links wide, course east. At eighty-eight chains and "seventy-five links crosses Los Angeles and Santa "Barbara stage road course south, fifty degrees east "and north, fifty degrees west. At eighty-nine chain "and fifty links passes the easterly edge of a small, "round, isolated hill in the plain. At one hundred and "forty-seven chains and ten links crosses old Los "Angeles and Santa Barbara road course north, sev- "enty degrees east, and south, seventy degrees west. "At one hundred and fifty chains and fifty links

157 "passes the extreme west edge of the oak grove of "the Encino. At one hundred and eighty-three "chains enters hills and ascends. At one hundred "and ninety-nine chains top of hill, and thence "along top of ridge two hundred and ten chains and "sixty-eight links to a post marked 'E. No. 4' in "mound of rocks, station, on the east side of ridge, "and one hundred links from the top of the same, "from which post a white oak tree eight inches in "diameter bears north, fifty-four degrees east, seven-"teen links distant, and

158 "Thence over broken hills on the south of the "valley of San Fernando east, at eighty-one chains "and fifty links intersects line between ranges fif-"teen and sixteen west, township one north, four-"teen chains north of corner to sections nineteen, "twenty-four, twenty-five and thirty. At ninety "chains and sixty-two links the ranch house orig-"inally occupied by Vicente de la Ossa bears north "fifty-one chains and twelve links, distant two hun-"dred and twelve chains, and seventy-eight links to "the point of beginning, containing four thousand "four hundred and sixty acres and seventy-"three hundredths of an acre, and being designated

159 "upon the plats of the public surveys as lot number "thirty-eight in Twp. one, north of range fifteen west, "and lot numbered thirty-eight in township one "north of range sixteen west, San Bernardino base "and meridian.

"Also II. Eight tracts of land at the Mission "San Fernando confirmed to J. S. Alemany, Bishop, "&c., the boundaries of which are described as fol-"lows:

TRACT NUMBER ONE—MAIN BUILDINGS.

"Beginning at the southwest corner of the main "building from which station one of tract number "two or the center of the gate of the walled vineyard

160 "and orchard bears north, fifty-five degrees west, dis-
"tant nine chains and forty-two links and the north-
"east corner of tract number three bears south, fifty-
"eight degrees west, distant four chains and thirty-
"two links.

"Thence according to the true meridian, the vari-
"ation of the magnetic needle being thirteen degrees
"and thirty minutes east, north, at one chain to the
"northwest corner of the main building and to com-
"mencement of a yard one chain and seventy-two
"links to the northwest corner of said yard or corral,
"station.

161 "Thence north, eighty-nine degrees east, along the
"adobe wall of the corral one chain and sixty-four
"links to an angle in the wall, station.

"Thence north, sixty-four degrees east, one chain
"and seventy-seven links to wall of houses, station.

"Thence along said wall north, twenty degrees
"west. At three chains and nineteen links south-
"west corner of the church at four chains and two
"links northwest corner of the church and southwest
"corner of the cemetery, four chains and ninety-
"seven links to the northwest corner of the ceme-
"tery wall, station.

162 "Thence north, seventy degrees east, two chains
"and nine links to the northeast corner of the cem-
"etery wall, station.

"Thence south, twenty-two degrees east, ninety-
"five links to the southeast corner of the cemetery
"wall, and the north wall of the church, station.

"Thence north, seventy-one degrees and thirty
"minutes east, thirty-eight links to the northeast
"corner of the church, station.

"Thence south, nineteen degrees east, thirteen
"links to wall of a row of buildings, station.

"Thence north, seventy degrees east, three chains

163 "and sixty-six links to the northeast corner of the "row of buildings, station.

"Thence south, seventeen degrees east, one chain "and eighty-six links to corner of wall, station.

"Thence south, seventy-one degrees west, sixty- "one links to main body of block, station.

"Thence south, fifteen degrees and thirty minutes "east, four chains to the southeast corner of block, "station.

"Thence south, seventy-seven degrees west, four "chains and fifty links to the southwest corner of "block, station.

164 "Thence along wing of block, south, three degrees "and thirty minutes east, two chains to the south- "east corner of the wing, station.

"Thence north, eighty-nine degrees west, seventy- "one links to the southwest corner of the wing, thence "crossing broad entrance to interior yard, at one "chain and one link across entrance and to corridor "with a row of massive brick pillars, from which "point the northwest corner of tract number seven "bears south, sixty-two degrees east, distant four "chains and thirty links, four chains and "twenty-five links to the point of begin-

165 "ning, containing four acres and three hundredths "of an acre.

"TRACT NUMBER TWO—VINEYARD AND ORCHARD.

"Beginning at the center of the gate in the wall "surrounding this tract,

"Thence according to the true meridian, the vari- "ation of the magnetic needle being thirteen "degrees and thirty minutes east, south, fifty-eight "degrees west, six chains to an angle in the wall, "station.

"Thence south, sixty-nine degrees fifteen minutes "west, five chains and sixty links to the southwest "corner of the tract, station. Thence north, thirty-

166 "eight degrees, thirty minutes west, sixteen chains "and ninety links to the northwest corner of the "tract, station, from which the corner to sections "thirty-two, thirty-three, four and five, on line "between townships two and three north, range fif- "teen west of San Bernardino meridian, bears north, "eighteen degrees six minutes west, distant one "hundred and six chains and twenty-four links.

"Thence north, seventy-three degrees east, twenty- "nine chains to the northeast corner of the tract, "station.

"Thence south, sixteen degrees east, twelve chains
167 "to an angle in the wall, station.

"Thence south, twenty-five degrees west, two "chains and sixty-six links to an angle in the wall, "station.

"Thence south, eighty-two degeees and thirty "minutes west, one chain and seventy-five links to "an angle in the wall, station.

"Thence south, seventy-five degrees west, one "chain and seventy-five links to an angle in the "wall, station.

"Thence south, sixty-two degrees west, three "chains and fifty links to an angle in the wall,
168 "station.

"Thence south, seventy-five degrees and thirty "minutes west, three chains and sixty-five links to "the point of beginning. Containing thirty-eight "acres and forty-six hundredths of an acre.

"TRACT NUMBER THREE—ADOBE BUILDING.

"Beginning at the northeast corner of the tract,

"Thence according to the true meridian, the vari- "ation of the magnetic needle being thirteen "degrees and thirty minutes east, south, twenty- "five degrees west, two chains and forty-two links to "the southeast corner of the building, station.

"Thence north, sixty-five degrees west, fifty-four

"links to the southwest corner of the building,
"station.

"Thence north, twenty-five degrees east, two
"chains and forty-two links to the northwest corner
"of the building, station.

"Thence south, sixty-five degrees east, fifty-four
"links to the point of beginning. Containing thir-
"teen hundredths of an acre.

"TRACT NUMBER FOUR—ADOBE BUILDING.

"Beginning at the northeast corner of the tract,
"from which the southeast corner of tract number
"three bears north, twenty-five degrees east, distant
"forty-four links.

"Thence according to the true meridian, the vari-
"ation of the magnetic needle being thirteen degrees
"and thirty minutes east, south, twenty-five degrees
"west, two chains and forty-two links to the south-
"east corner of tract number four, station.

"Thence north, sixty-five degrees west, fifty-four
"links to the south-west corner of tract number
"four, station.

"Thence north, twenty-five degrees east, two
"chains and forty-two links to the northwest corner
"of tract number four, station.

"Thence south, sixty-five degrees east, fifty-four
"links to the point of beginning, containing thir-
"teen hundredths of an acre.

TRACT NUMBER FIVE—ADOBE BUILDING.

"Beginning at the northeast corner of this tract,
"from which the northwest corner of tract number
"three bears south, sixty-five degrees east, distant
"forty-four links.

"Thence according to the true meridian, the vari-
"ation of the magnetic needle being thirteen degrees
"and thirty minutes east, north, sixty-five degrees
"west, three chains and thirty-three links to the
"northwest corner of tract number five, station.

172 "Thence south, twenty-five degrees west, fifty-four "links to the southwest corner of tract number five, "station.

"Thence south, sixty-five degrees east, three "chains and thirty-three links to the southeast cor- "ner of tract number five, station.

"Thence north, twenty-five degrees east, fifty-four "links to the point of beginning, containing eighteen "hundredths of an acre.

"TRACT NUMBER SIX—ADOBE BUILDING.

"Beginning at the northeast corner of this tract, "from which the northwest corner of tract number
173 "five bears south, sixty-five degrees east, distant "forty-four links.

"Thence according to the true meridian, the var- "iation of the magnetic needle being thirteen "degrees thirty minutes east, north, sixty-five "degrees west, three chains and eleven links to the "northwest corner of tract number six, station.

"Thence south, twenty-five degrees west, fifty-four "links to the southwest corner of tract number six, "station.

"Thence south, sixty-five degrees east, three "chains and eleven links to the southeast corner of
174 "tract number six, station.

"Thence north, twenty-five degrees east, fifty-four "links to the point of beginning, containing seven- "teen hundredths of an acre.

"TRACT NUMBER SEVEN—LONG ADOBE BUILDING.

"Beginning at the northwest corner of this tract.

"Thence according to the true meridian, the vari- "ation of the magnetic needle being thirteen degrees "and thirty minutes east, east, seventy-one links to "the northeast corner of the building, station.

"Thence south, seven chains to the southeast cor- "ner of the building, station.

175 "Thence west, seventy-one links to the southwest "corner of the building, station.

"Thence north, seven chains to the point of beginning. Containing fifty hundredths of an acre.

"TRACT NUMBER EIGHT—VINEYARD.

"Beginning at the gate on the north side of the "adobe wall surrounding this tract from which the "southwest corner of tract number seven bears "north, fifty-one degrees east, distant three hundred "and fifty links.

"Thence south, seventy-eight degrees east, ten "chains and seventy links to the northeast corner of
176 "adobe wall, station.

"Thence south, eleven degrees west, eighteen "chains and twenty links to the southeast corner of "adobe wall, station.

"Thence north, eighty degrees west, eighteen "chains and forty-four links, to the southwest corner "of adobe wall, station.

"Thence north, thirteen degrees east, eighteen "chains and twenty links to the northwest corner of "adobe wall, station.

"Thence south, seventy-eight degrees east, seven "chains and fifty links to the point of beginning.
177 "Containing thirty-three acres and thirty-four hundredths of an acre.

"The sum of the areas of the above described "grants, 'El Encino' and 'eight tracts of land at the "'Mission San Fernando,' is four thousand, five "hundred and thirty-seven acres, and sixty-seven "hundredths of an acre, which deducted from the "total area comprised within the exterior boundaries "of the 'ex-Mission de San Fernando' one hundred "and twenty-one thousand, three hundred and "ninety-six acres, and thirteen hundredths of an "acre leaves for the area of the present survey of "the 'ex-Mission de San Fernando', one hundred

178 "and sixteen thousand eight hundred and fifty-eight
"acres, and forty-six hundredths of an acre, and be-
"ing designated upon the plats of the public surveys
"as lot numbered thirty-seven in township one
"north, of range fourteen west. Lot numbered thirty-
"seven in township one north, of range fifteen west.
"Lot numbered thirty-seven in township one north,
"of range sixteen west. Lot numbered thirty-seven
"in township one north, of range seventeen west.
"Lot numbered thirty-seven in township two north,
"of range fourteen west. Lot numbered thirty-seven
"in township two north, of range fifteen west. Lot
179 "numbered thirty-seven in township two north, of
"range sixteen west. Lot numbered thirty-seven in
"township two north, of range seventeen west. Lot
"numbered thirty-seven in township three north, of
"range fifteen west, and lot numbered thirty-seven
"in township three north, of range sixteen west, of
"the San Bernardino meridian.

"In witness whereof, I have hereunto signed my
"name officially and caused my seal of office to be
"affixed at the city of San Francisco, this eighteenth
"day of January, 1871.

[L. S.] "SHERMAN DAY,
180 "*U. S. Surveyor General for California.*

[Here follows map.]

Now know ye, that the United States of America, in consideration of the premises and pursuant to the provisions of the act of congress aforesaid of 3d March, 1851, and the legislation supplemental thereto, have given and granted and by these presents do give and grant unto the said Eulogio de Celis, and to his heirs, the tract of land embraced and described in the foregoing survey, excepting and reserving therefrom the rancho "El Encino" containing four thousand four hundred and sixty acres and seventy-three hundredths of an acre, confirmed

181 and patented January 8th, 1873, to Vicente de la Ossa, *et al*, and the eight tracts of land known as the Mission of San Fernando, containing in the aggregate seventy-six acres and ninety-four hundreths of an acre confirmed and patented May 31, 1864, to Joseph S. Alemany, Bishop of Monterey, and to his successors; but with the stipulation that in virtue of the 15th section of the said act, neither the confirmation of this said claim nor this patent shall effect the interests of third persons.

To have and to hold the said tract with the
182 appurtenances unto the said Eulogio de Celis and to his heirs and assigns forever with the condition, reservations and stipulation aforesaid.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this eighth day of January, in the year of our Lord one thousand eight hundred and seventy-three, and of the independence of the United States the ninety-seventh.

[SEAL.] By the President, U. S. GRANT.

183 By S. D. WILLIAMSON, *Secretary.*

C. B. BOYNTON,

Recorder of the General Land Office.

Recorded Vol. 9 pp. 140 to 163 inclusive.

Recorded February 21, *A. D.* 1876, at 20 min. past 10 A. M., in book 1 of patents, page 595, records of Los Angeles county, by request of I Lankershim.

J. W. GILLETTE,

County Recorder, Los Angeles County, Cal.

And plaintiff also introduced the judgment roll in the case of San Fernando Farm Homestead Association *vs.* Celis, *et al.*, being case No. 1526 in the

184 District Court of the seventeenth judicial district of the state of California in and for the county of Los Angeles, the pleadings in which said judgment roll showed that the plaintiff and defendants therein claimed title to the land involved in said action under the same Mexican grant recited in the patent hereinbefore set out; that an interlocutory degree of partition in said action was entered, and three commissioners were thereby appointed to make partition of said rancho, and that, under the instructions of the court, they employed a surveyor named William P. Reynolds to locate the exterior
185 lines of the Rancho ex-Mission San Fernando; that said Reynolds made his report to said commissioners and said commissioners reported to the court their proceedings, as well as said surveyor's, and that all the acts of the said commissioners, and of said surveyor, were by the court approved, and, subsequently, the final decree of partition was entered in said action, which said decree is in the words and figures following, to wit:

In the District Court of the seventeenth judicial district of the state of California, in and for the county of Los Angeles.

186 The San Fernando Homestead Association, plaintiff, *vs.* Eulogio F. de Celis, *et als.*, defts.

Judgment in Partition.

This action having been brought on to be heard upon the report of L. D. Gavitt, Thomas H. Burdick, and Henry Martyn Smith, commissioners appointed by the order of this court, the plaintiff appearing by A. Brunson and W. H. Mace, attorneys, and defendants Eulogio F. de Celis, Eulogio F. de Celis, administrator of the estate of Eulogio de Celis, deceased, by J. H. Lander, their attorney; defendants and minors José Miguel de Celis, Pastor de Celis, Fer-

187 nando de Celis, Pedro de Celis and Consuelo de Celis, by J. H. Lander, their duly appointed guardian *ad litem*; defendants Pio Pico, George Treat, Samuel L. Theller, and James L. Blakie, by Glassell, Chapman and Smith, attorneys; Francis Mora, defendant, by Kewen & Howard, attorneys; intervenor Joseph S. Alemany, by Kewen & Howard, his attorneys, and intervenor Maria de Los Angeles Felis de Burrows, by C. H. Larrabee, attorney, all of whom have been regularly and duly served with process herein. And on reading and filing said report of the commissioners aforesaid, which report
188 bears date the twenty-fourth day of March, *A. D.* 1871, by which it appears that the said commissioners have made partition of the premises described in the complaint in this action, as directed and determined by this court, by its interlocutory decree bearing date December 6th, *A. D.* 1870, to which reference is made and by which said partition the said commissioners have divided the whole of said premises, exclusive of the exceptions and reservations in said interlocutory decree named, into two allotments of equal value, and have set off in severalty to the plaintiff the lands hereinafter particularly
189 described, as apportioned to them, leaving the remainder unpartitioned as by said interlocutory decree, ordered and adjudged, as will more fully appear by a map of said partition thereto annexed, and by the said interlocutory decree, and the several parties appearing herein as aforesaid consenting thereto, on motion of A. Brunson and W. H. Mace, attorney for plaintiff,

It is ordered and adjudged that the said report and all things therein contained do stand ratified and confirmed, and that the partition so made be firm and effectual forever, so far as the same relates to the lands herein described and allotted to the

190 plaintiff, leaving the balance of said lands for the further and future judgment of this court.

It is further ordered, adjudged and decreed that the plaintiffs, to wit: The San Fernando Farm Homestead Association, their successors and assigns, in their own right, as in said interlocutory decree set forth, do henceforward forever have and hold in severalty, in lieu and stead of their former estate in said Rancho ex-Mission de San Fernando, free, clear and discharged of claim, title, interest or ownership therein of the other parties in this suit, or any of them, or the successors or representatives of them,
191 or any of them, the following described parcels and portions of said rancho, to wit:

Beginning at the live oak tree 36 inches in diameter, station 2 of the official survey of the said Rancho ex-Mission de San Fernando, and station 3 of the final and official survey of the Rancho Providencia, H. A., 1 station; thence north, 8° west, along the line of the official survey of the said Rancho ex-Mission de San Fernando, and at 190 chains and 27 links intersecting the line between township 1 and 2 north, range 14 west of the San Bernardino meridian, *493* chains west of corner to sections 4, 5, 32 and 33, and
192 at 271 chains and 30 links to a sycamore post in rock mound marked H. A., 2 station; thence west and at 143 chains and 84 links to the corner to sections 25, 30, 31 and 36, on line between ranges 14 and 15 west, township 2 north, H. A., 3 station; thence south, 89° 36′ west, 476 chains and 64 links to stake, the corner to sections 25, 30, 31 and 36, on line between ranges 15 and 16 west, township 2 north, H. A., 4 station; thence south, 89° 33′ west, on line parallel to the south boundary of township 2 north, range 16 west, 476 chains and 10 links to post, the corner to sections 25, 30, 31 and 36, on line between ranges 16 and 17 west, township 2 north, H. A., 5

193 station; thence west on line parallel to the south boundary of township 2 north, range 17 west, and at 206 chains and 71 links intersect the western exterior boundary of Rancho ex-Mission San Fernando, H. A., 6 station; thence south, 12½° west, along the line of the official survey of said Rancho ex-Mission San Fernando, and at 104 chains and 92 links to the forked white oak tree, 25 inches in diameter, station 34 of the official survey of said Rancho ex-Mission San Fernando, and station 4 of the official survey of the Rancho El Escorpion, H. A., 7 station; thence south, 84° east, 105 chains and 34 links to red oak
194 post, in a mound of stones marked S. F., 35 station, and station 3, and northeast corner of Rancho El Escorpion, H. A., 8 station; thence south, 6° west, 105 chains and 34 links to a redwood post marked S. F., 36 station, and station 2, and southeast corner Rancho El Escorpion, H. A., 9 station; thence north, 84° west, 105 chains and 34 links to a black oak stake marked S. F., 37 station, in mound of rock and earth, being station 1, and southwest corner of Rancho El Escorpion station, at the east base of the ridge called Sierra Santa Susanna, H. A., 10 station; thence south, 32° 37′ east, 161 chains and 51 links
195 to a live oak tree 45 inches in diameter, marked on the west side with a D X S. F., 38 station, and H. A., 11 station; thence south, 36¼° east, at 44 chains and 96 links intersecting offset base line 133 chains and 35 links west of corner, 58 chains south of corner to sections 13, 18, 19 and 24 on line between ranges 16 and 17 west, township 1 north of the San Bernardino meridian and at 76 chains and 70 links to blazed white oak tree 28 inches in diameter, station 39 S. F. H. A. 12 station; thence north, 58½° east, 25 chains to live oak tree 35 inches in diameter, S. F. 40 station, and H. A 13 station; thence north, 89° east, 39 chains to a brown

196 sandstone rock 24x9x4 inches, S. F. 41 station, and H. A. 14 station; thence south, 65¾° east, 272 chains to a sandstone rock 12x12x10 inches, S. F. 42 station, and H. A. 15 station; thence north, 87½° east, 327 chains and 97 links to large sandstone rock 24x16 x8 inches in an irregular mound of rocks on a very high peak about 800 feet above the San Fernando valley, marked S. F. and S. F. 43 station, H. A. 16 station; thence south, 87° east, 680 chains and 50 links, to a sandstone rock marked S. F. 44 station, buried in earth, with a face 14 inches in diameter, cropping out of same, H. A. 17 station; thence north,
197 7¼° east, 61 chains and 34 links to stake in stone mound, S. F. 1 station, and station 4 La Providencia, H. A. 18 station; thence north, 20½° west, along the line of the official survey of the Rancho San Fernando, and at 159 chains 43 links intersecting offset to township line in township one north, range 14 west, of the San Bernardino meridian, 35 chains and 95 links east of corner to sections 16, 17, 20 and 21, 210 chains and 68 links to live oak tree 36 inches in diameter, station 2 San Fernando, station 3 La Providencia and H. A. 1 station, the point of beginning, containing 64,011 53-100 acres, saving
198 and excepting therefrom a tract of land known and called the Rancho El Encino, in accordance with the interlocutory decree in this case mentioned, the co-bounderies of which said Rancho El Encino are as follows, to wit: Beginning at a black walnut tree 12 inches in diameter, marked E No. 1, one of a cluster of four black walnuts standing on the summit of a low isolated hill near the foot of the mountains on the south side of the valley of San Fernando; thence north, 210 chains 68 links, to post in mound, marked E. 2 station, and S. F.; thence west, at 132 chains and 25 links intersecting line between ranges 15 and 16 west, in township 1 north, San

Bernardino meridian, 14 chains and 65 links south of corner to sections 1, 6, 7 and 12, 210 chains and 68 links to redwood post, marked E. No. 3 station, and S. F.; thence south, 210 chains and 68 links to post in rock mound on east slope of ridge, about 100 links from top, marked E. No. 4 and S. F.; thence east, at 81 chains and 45 links intersecting line between ranges 15 and 16 west, in township 1 north, 14 chains and 57 links north of corner to sections 19, 24, 25 and 30, 212 chains and 78 links to the point of beginning, containing 4460 73-100 acres, which being deducted from the total area of this division, to wit, 64,011 53-109 acres, leaves a clear area to the plaintiffs of 59,550.80 acres.

And it is further ordered, adjudged and decreed that the exception and reservation of said Rancho El Encino from the aforesaid allotment to plaintiffs be and the same is hereby excepted and segregated by the co-boundaries as above set forth.

To the defendants in this case there remains the following tract of land in said Rancho San Fernando unpartitioned, subject to the further action, judgment and decree of this court, but of and in which the plaintiffs, by reason of this decree and partition, hold no right or interest whatever:

Beginning at station 3 of the official survey of the Rancho Ex-Mision de San Fernando a red granite rock 20x14x12 inches, and also being station 1 of the official survey of the Rancho Tujunga; thence following the exterior lines of the official survey of said Rancho ex-Mission de San Fernando south 81° west, 10 chains and 50 links to a laurel stake in stone mound, S. F. 4 station; thence south, 82½° west, 21 chains and 50 links to a laurel stake in stone mound, S. F. 5 station; thence north 74½° west, 64 chains to an elder stake in stone mound, S. F. 6 station; thence south, 82° west, and at 3

202 chains and 76 links, intersect line between ranges 14 and 15 west, township 2 north, San Bernardino meridian, 177 links north of quarter section corner between sections 1 and 6 and at 49 chains and 50 links to an elder stake in rock mound in the middle of an old road, running south, 65° east, and north, 65° west, S. F. 7 station; thence north, 41° west, 22 chains and 50 links to a buckeye post in rock mound, S. F. 8 station; thence north, 20° west, 12 chains to a laurel stake in stone mound, S. F. 9 station; thence north, 5° west, and at 12 chains and 37 links intersect line between townships 2 and 3
203 north, range 15 west, 18 chains and 42 links east of corner to sections 1, 2, 35 and 36, and at 53 chains and 50 links to a sycamore stake in stone mound on the point of bluff on the left and east side of Pacoima cañon, S. F. 10 station; thence north, 50° east, 6 chains to a sycamore stake in rock mound, S. F. 11 station; thence north, 16½° east, 105 chains to old stake in rock mound, S. F. 12 station; thence north, 66° west, 80 chains to a laurel stake in stone mound, on the west slope of a small spur running north and south, S. F. 13 station; thence south, 86° west, 276 chains and 50 links to a laurel stake in
204 stone mound on the east slope of a low spur of mountain, S. F. 14 station; thence north, 54½° west, 132 chains to an elder post 4 feet long and 5 inches square, in rock and earth mound, S. F. 15 station; thence south, 47¾° west, 182 chains to a black walnut tree, 8 inches diameter, standing on the northern slope near the summit of a high mountain of the Santa Susanna, range S. F. 16 station; thence north, 80¾° west, 154 chains and 63 links to a post oak tree 22 inches diameter, S. F. 17 station; thence south, 75° west, 26 chains and 50 links to a post oak post on the summit of a high, smooth mountain of the Santa Susanna range, S. F. 18 station, *for-*

merly a station of the U. S. coast survey; thence south, 38° west, 15 chains to a black walnut stake in a sand rock mound, S. F. 19 station; thence south, 4¾° west, 62 chains and 50 links to a black walnut stake in mound of rock S. F. 20 station; thence south, 77½° west, 60 chains to a black walnut stake in rock mound, S. F. 21 station; thence south, 13½° west, 88 chains to a sycamore stake, S. F. 22 station; thence south, 7° east, 27 chains to a sycamore stake, S. F. 23 station; thence south, 83° west, 1 chain to stake 20 links from top of steep ridge on south slope, S. F. 24 station; thence south, 7° east, 10 chains and 50 links to stake, S. F. 25 station; thence south, 24° east, 2 chains and 50 links to stake, S. F. 26 station; thence south, 15° west, 5 chains to stake, S. F. 27 station; thence south, 5° west, 1 chain to stake, S. F. 28 station; thence south, 22½° west, 7 chains to stake, S. F. 29 station; thence south, 41° west, 6 chains to stake on north slope of hill in chapparal, S. F. 30 station; thence south, 38° west, at 90 chains and 42 links, intersecting line between ranges 16 and 17 west, township 2 north, 1 chain and 27 links north of corner to sections 7, 12, 13 and 18, 272 chains to dead white oak stump, S. F. 31 station; thence south, 39° west, 8 chains and 30 links to stake on northern slope of low rolling hills, S. F. 32 station; thence north, 85½° west, 72 chains to black oak stake in mound of rock on top of large sandstone outcropping on east face of rocky mountains of Santa Susanna, S. F. 33 station; thence south, 12½° west, 100 chains and 18 links to sycamore post, H. A. 6 station; thence east on line parallel to the south boundary of township 2 north, range 17 west, 206 chains and 71 links to post, the corner to sections 25, 30, 31 and 36 on line between ranges 16 and 17 west, township 2 north, H. A. 5 station;

208 thence north, 89° 33′ east on line parallel to the south boundary of township 2 north, range 16 west, 476 chains and 10 links to stake, the corner to sections 25, 30, 31 and 36, on line between ranges 15 and 16 west, township 2 north, H. A. 4 station; thence north, 89°36′ east, 476 chains and 64 links to the corner to sections 25, 30, 31 and 36, on line between ranges 14 and 15 west, township 2 north, H. A. 3 station; thence east 143 chain and 84 links to sycamore post in rock mound, H. A. 2 station; thence north, 8° west, along the exterior line of the official survey of said Rancho ex-Mission de San
209 Fernando, 350 chains and 70 links to point of beginning, containing 57,530 83-100 acres. Saving and excepting therefrom the following described tracts of land as in the interlocutory decree set forth, to wit: Tract 2, lot 39. Begin at the west corner of the adobe wall of said tract, being the vineyard in rear of main mission building from which the quarter section corner between sections 32 and 5 on township 3 and 2 north, range 15 west, of the San Bernardino meridian, bears north, 17°46′ west, 104 chains, 70 links distant, and run north, 74° east, along the adobe wall 28 chains and 97
210 links to north corner of same and set granite rock 12x12x10 inches, 2 station; thence south, 15° east, along eastern wall of vineyard 11 chains and 97 links to end of adobe wall and set granite rock, 3 station; thence south, 27° west, along adobe wall 2 chains and 66 links to rock, 4 station; thence south, 83° west. 1 chain and 75 links to stake, 5 station; thence south, 75¾° west, 1 chain and 74 links to stake, 6 station; thence south, 63½° west, 3 chains and 51 links to stake, 7 station; thence south, 76° west, 1 chain and 90 links to stake, 8 station; thence south, 78¼° west, 1 chain and 94 links to stake, 9 station; thence south, 57¼° west, 5 chains and 22

211 links to stake, 10 station; thence south, 70° west, 5 chains and 62 links to stake, 11 station; thence north, 35½° west, 16 chains and 97 links to point of beginning, containing 38 23-100 acres.

Tract No. 1, lot 38. Begin at a granite rock 15x8x4 at the southwest corner of main mission building and run north on west side of building, 1 chain and 69 links to granite rock 8x4x4 inches, 2 station; thence south, 89° east, 1 chain and 63 links to granite rock 12x8x4 inches, 3 station; thence north, 64° east, 1 chain and 77 links to granite rock 13x8x5 inches, 4 station; thence north, 20° west,
212 4 chains and 95 links to granite rock 11x8x6 inches, 5 station, from which station 4 of tract No. 2, lot 39, bears north, 11¾° east, 139 links distant; thence north, 70° E., 2 chains and 9 links to granite rock 10x8x4 inches, 6 station; thence south, 22° east, 95 links to granite rock 8x4x3 inches, 7 station; thence north, 71½° east, 32 links to granite rock 8x4x3 inches, 8 station; thence south, 19° east, along wall of church, 13 links to granite rock 13x8x7 inches, 9 station; thence north, 70° east, 3 chains and 44 links to granite rock 10x8x4 inches, 10 station; thence south, 17° east, 1 chain and 86 links to granite rock
213 12x11x4 inches, 11 station; thence south, 71° west, 61 links to granite rock 8x6x3 inches, 12 station; thence south, 15½° east, 4 chains to conglomerate sandrock 8x8x5 inches, 13 station; thence south, 77° west, 4 chains and 50 links to granite rock 10x6x4 inches, 14 station; thence south, 3½° east, 1 chain and 39 links to granite rock 17x8x7 inches, 15 station; thence north, 89° west, 4 chains and 29 links to point of beginning. Containing 3.95 acres.

Tract No. 3, lot 40: Begin at station 1 of tract No. 1, lot 38 and run for connection line south, 58° west, 4 chains and 32 links to northeast corner of old adobe house and point of beginning, set

214 sandstone 12x8x3 inches 1 station; thence south, 25° west, 2 chains and 42 links to sandstone 17x11x4, 2 station; thence north, 65° west, 54 links to granite rock 17x17x8, 3 station; thence north, 25° east, 2 chains and 42 links to granite rock 17x8x7 inches, 4 station; thence south, 65° east, 54 links to point of beginning. Containing 13-100 acres.

Tract No. 4, lot 41: From station 3 of tract No. 3, lot 40, run south, 25° west, 44 links, to station 1 and northwest corner of tract No. 4, lot 41, granite rock 8x5x4 inches, 1 station; thence south, 25° west, 2 chains and 42 links to granite rock 17x11x7
215 inches, 2 station; thence south, 65° east, 54 links to granite rock 5x3x3 inches, 3 station, thence north, 25° east, 2 chains and 42 links to granite rock 17x6x5 inches, 4 station; thence north, 65° west, 54 links to point of beginning, containing 13-100 acres.

Tract No. 5, lot 42: From station 4 of tract No. 3, lot 40, and run north, 65° west, 44 links to granite rock 7x7x4 inches, 1 station; thence north, 65° west, 3 chains and 32 links to sandstone 8x8x5 inches, 2 station; thence south, 25° west, 54 links to granite rock 14x8x7 inches, 3 station; thence south,
216 65° east, 3 chains and 32 links to sandstone, 15x7x5 inches, 4 station; thence north, 25° east, 54 links to point of beginning, containing 18-100 acres.

Tract No. 6, lot 43:

From station 2, tract 4, lot 41, run north, 65° west, 44 links to granite rock 8x7x6 inches, 1 station; thence north, 65° west, 3 chains and 11 links to granite rock 7x7x5 inches, 2 station; thence north, 25° east, 54 links to granite rock 8x6x4 inches, 3 station; thence south, 65° east, 3 chains and 11 links to syenite rock 8x6x4 inches, 4 station; thence south, 25° west, 54 links to point of beginning, containing 16-100 acres.

217 Tract No. 7, lot 44: From station 15, tract 1, lot 38, run south, 57¼° east, 3 chains and 67 links to granite rock, 1 station; thence east, 71 links to granite rock 9x9x8 inches, 2 station; thence south, 7 chains to granite rock 17x12x8 inches, 3 station; thence west, 71 links to granite rock 11x8x7 inches, 4 station; thence north, 7 chains to point of beginning, containing 50-100 acres.

Tract No. 8, lot 45: From station 2, tract No. 5, lot 42, run south, 58° east, 8 chains and 33 links to a syenite rock 21x11x8 inches, 1 station; thence south, 13° west, 18 chains and 17 links to a granite
218 rock 8x6x4 inches, 2 station; thence south, 78° east, 18 chains and 48 links to a granite rock 12x5x4 inches, 3 station; thence north, 12¼° east, 18 chains and 20 links to a granite rock 18x7x5 inches, 4 station; thence north, 78° west, 18 chains and 20 links to point of beginning, containing 33 27-100 acres.

SECOND EXCEPTION OR RESERVATION.

The garden, orchard and vineyard which lie immediately in front of the principal mission building, with the boundaries as fixed by the adobe walls and wooden fences as they were July 2nd, 1869,
219 which enclose the same, is identical with tract No. 8, lot 45.

And the vineyard and orchard which lie in rear of the principal mission building with the boundaries thereof as the same were on the 2nd day of July, 1869, fixed by the adobe walls and fences then including the same, is identical with tract No. 2, lot 39.

The land lying between the said garden, orchard and vineyard in front of the said principal mission building, and the said orchard and vineyard in rear of said mission building. Begin at the south corner and station 11, ~~and~~ tract No. 2, lot 39, and

220 run south, 56¼° east, 9 chains and 87 links to granite rock at station 2, tract No. 5, lot 42; thence south, 58° east, 8 chains and 33 links to station 1 of vineyard tract No. 8, lot 45; thence south, 78° east, 18 chains and 18 links to station 4 of vineyard tract No. 8, lot 45; thence north, 15½° west, 21 chains and 52 links to granite rock 11x9x5 inches, F station; thence north, 61¾° west, 7 chains and 10 links to station 3 of tract No. 2, lot 39 (vineyard); thence south, 27° west, 2 chains and 66 links to station 4 of tract No. 2, lot 39; thence south, 83° west, 1 chain and 75 links to station 5 of tract No. 2, lot 39;
221 thence south, 75¾° west, 1 chain and 74 links to station 6 of tract No. 2, lot 39; thence south, 63½° west, 3 chains and 51 links to station 7 and tract No. 2, lot 39; thence south, 76° west, 1 chain and 90 links to station 8 of tract No. 2, lot 39; thence south, 78½° west, 1 chain and 94 links to station 9 of tract No. 2, lot 39; thence south, 57¼° west, 5 chains and 22 links to station 10 of tract No. 2, lot 39; thence south, 70° west, 5 chains and 62 links to station 11 of tract No. 2, lot 39. Containing 41 86-100 acres.

Exception No. 4. Fourth exception or reservation.

222 Maria Los Angeles Feliz de Burrows tract: Begin at a mound of rocks from which the quarter section corner between sections 32 and 5, townships 3 and 2 north, range 15 west, San Bernardino Meridian bears north, 16¾° west, 42 chains and 86 links distant and run north, 79° west, 41 chains and 74 links to rock mound, sand rock marked M. F. B., 2 station; thence south, 11° west, 42 chains and 23 links to stake in stone mound M. F. B., 3 station; thence south, 79° east, 42 chains and 34 links to a granite rock 32x20x16 inches M. F. B., 4 station; thence north, 10° east, 42 chains and 35 links to point of beginning, containing 177.75 acres.

223 Supplement to exception No. 2. The 1000 acres adjoining and including the garden, orchard and vineyard which lie immediately in front of the principal mission building, and 1000 acres of land including the vineyard and orchard which lie in rear of the main mission building. From granite rock M. F. B., 4 station, being the southeast corner of Maria Los Angeles Felis de Burrows tract. P. R. 1 station and run south, 80¼° east, and at 55 chains and 45 links to granite rock, station 2 of tract No. 2, lot 39, vineyard in rear of principal mission building, 78 chains to post in mound P. R., 2
224 station; thence south, 12¼° west, and at 32 chains and 53 links to granite rock, station 4 of tract No. 8, lot 45. Vineyard in front of principal mission building and at 50 chains and 73 links to granite rock, station 3 of tract No. 8, lot 45, 148 chains and 50 links to granite rock 32x16x16 P. R., 3 station; thence north, 80° west, 140 chains and 34 links to granite rock 17x16x15 inches P. R., 4 station; thence north, 12¼ east, 148 chains and 50 links to granite rock 12x8x5 inches P. R. 5 station; thence south, 79¼° east, and at 20 chains to stake in mound station 3 of Maria Los Angeles Feliz de Bur-
225 rows tract, 62 chains an 34 links to point of beginning, containing 2076.97 acres.

Provided and it is adjudged and decreed that nothing hereinbefore contained and adjudged shall by reason of anything expressed in the report of the referees or designated and marked on the map accompanying the same, be held or considered or be effective to determine as between the defendants, or any of them, or their successors any question of title or of boundary excepting as between them and the plaintiff, and as between their lands and the lands hereby partitioned and set apart to the plaintiff which partition or division line is hereby ratified,

226 adjudged and established forever as shown by the map accompanying this report of the said commissioners but such questions of title or boundary as between defendants shall remain subject to future determination, as by the interlocutory decree hereinbefore, was directed.

It is further ordered, adjudged and decreed that the expenses of the referees, including those of the surveyor and his assistant as ascertained and set forth in the report of said commissioners or referees be allowed by the court and the amount thereof, together with the court and other costs already
227 accrued and to accrue, as also the sum of five hundred dollars which is hereby allowed to H. K. S. O'Melveny, Esq., referee to whom this cause was referred for interlocutory decree and matters therein contained, be on the final hearing of said action apportioned among the different parties to this action, equitably and be a lien and charge upon their respective interests as by law provided.

This done and signed in open court this 24th day of March, *A. D.* 1871.

MORRISON, *Judge.*

Endorsed: 1526 San Fernando Farm Homestead
228 Association *vs* Eulogio F. de Celis, *et al.* Judgment in partition. Filed Mar. 24, 1871. T. D. Mott, clerk; by J. W. Gillette, deputy.

Plaintiff also introduced, in connection with said partition suit, Reynolds' report and field notes and the map known as the Reynolds' map of the San Fernando ranch, which are in the words and figures following, to wit:

[For Reynolds' map—see large roll of maps filed herewith and made a part of this statement.]

In the District Court of the seventeenth judicial district, of the State of California, in and for the county of Los Angeles.

229 The San Fernando Farm Homestead Association *vs.* Eulogio F. de Celis, *et als*, No. 1526, in partition.

To the Honorable Commissioners in partition in the above entitled cause.

Gentlemen: In accordance with your instructions to make a survey of the exterior lines of the lands of the ex-Mission of San Fernando and re-establish the stations of the official survey by the United States of the same, and extend the township and range lines within the limits of said official survey and re-establish the corners thereon. I proceeded to
230 carry into effect said instructions in conformity to the interlocutory decree filed in the above entitled cause, a certified copy of which you furnished me as a part of the above mentioned instructions.

In consequence of not receiving the necessary exhibits, viz:—The maps and field notes of the former official survey, from the plaintiffs in this cause, I was obliged to run from a point 140 chs. south of the established corner to township 1 north, and 1 south, ranges 13 and 14 west of the San Bernardino meridian, and retrace the offset base line through Cahuenga pass to the western exterior limits of Rancho San Fernando, setting posts and
231 mounds at the stations of said line, a distance of 1843.43 chains, equivalent to 23 miles, 3 chains and 43 links.

Land on this line mostly 2nd rate, with rolling hills.

I then extended the offset south boundary of township 1 north, range 14 west, San Bernardino meridian, from its initial point on east boundary to the west boundary of said township, posts, mounds and pits at proper corners, a distance on the offsets, of 1220 chains or 15¼ miles.

Land on this line within the limits of the rancho

232 is light and sandy, and broken with dry sandy washes.

I then ran out the west boundary of township 1 north, range 14 west, from a point 87.62 chains south of the offset base line at the foot of broken and impassable hills, and then continued the same north to corner of townships 1 and 2 north, range 14 and 15 west, a distance of 427.50 chains, or 5 miles, 27 chains and 50 links. Land for 1st mile good 2nd rate soil, the last 1½ miles is sandy with cacti and chamiso.

I then retraced the north boundary of township 1
233 north, range 14 west, 2 miles east. This last line is through dense growth of chapparal and cacti with coarse gravelly 2nd rate soil.

I then retraced the offset south boundary of township 1 north, range 15 west, 6 miles, the line running a little north along foot of the north slopes of the spurs from the mountains on the south; sometimes over the spurs extending into the plain; 6 miles or 480 chains, setting mile and half mile posts with mounds as per instructions. Land along this line 1st mile good 2nd rate soil, the next 3 miles, 1st rate soil, and the last 2 miles generally hill 2nd
234 rate soil.

I then retraced the west boundary of this township as delineated on the accompanying map, north from the foot of north slope of the mountains on the south side of the rancho and through the Encino rancho 4 miles, 15.52 chains, setting the mile and half mile posts to the corner of townships 1 and 2 N. ranges 15 and 16 west.

1st mile and ¼ is broken rolling hills; soil 2nd rate.

The line through the Encino from this last point is 1st-class soil to the dry arroyo of Las Calabasas; thence to township corner is loose 2nd-rate soil, and

235 a little to the east of the line is a scattery growth of guatamotes.

From this point I retraced the south boundary of townships 2 north, range 15 west, east on a random line 5 miles, 76 chains and 76 links. Setting temporary mile and half-mile posts, and intersected the south boundary of townships, 3.36 links south of corner to township 1 and 2 north, ranges 14 and 15 west, which makes the course back on true line south 89° 36' west, and the correction, 3 chains and 24 links west, and 56 links north per mile.

I then retraced the line back, setting the mile and
236 ½-mile posts in their proper places, with *munds* and pits as per instructions.

The first 3½ miles westward is level plain covered with chaparral, scattering elders, laurels, cedars, and in places with a dense growth of cacti. The last 2½ miles is nearly level grass plain, sloping very gradually south, with good 2nd-rate soil.

The government not having established any offset south boundary of township 1 north, range 16 west, except the offset base line through said township, I began at the corner to sections 13, 18, 19 and 24, on line between ranges 16 and 17 west, and run north,
237 retracing said range line 3 miles, setting the mile and ½-mile posts with mounds and pits, as per instructions, to the previously established corner to township 1 and 2 north, ranges 16 and 17 west.

The land along this line is good 2nd-rate soil, nearly level, sloping gradually north, and on the 1st mile with high rolling grass hills, about 20 chains east and west, running parallel thereto.

I then run east on random line on the south boundary of township 2 north, range 16 west, 5 miles, 78 chains and 45 links, setting temporary mile and ½-mile posts, and intersected east boundary

238 of township 380 links, south of the corner to townships 1 and 2 north, ranges 15 and 16 west.

Therefore the correction will be 155 links west and 63 links north per mile.

I then corrected back this line, making the true course south, 89° 33′ west, setting the section and ¼-section posts with mounds and pits, as per instructions.

From the corner to township 1 and 2 north, ranges 16 and 17 west, I run west retracing the south boundary of township 2 north, range 17 west, 3 miles to a point. I consider near the exterior limits of the
239 Rancho San Fernando, rebuilding the old mounds and setting the section and ¼-section posts therein, as per instructions.

The first 2 miles of this line is a nearly level plain, sloping gradually to the south. The last mile is hilly and broken.

From the corner to township 1 and 2 north, ranges 16 and 17 west, I ran north, retracing the line between ranges 16 and 17 west, 4½ miles, setting the section and ¼-section posts, mounds and pits, as per instructions.

First 2 miles nearly level plain, sloping gradually
240 south. Third mile hilly, with white and red oak groves to the westward, through which runs the overland stage road to San Francisco *via* Santa Barbara. Soil 3rd-rate.

The last mile and ½ is level plain, with scattering oak timber to the end of the line. Soil 2nd-rate.

From the corner to township 1 and 2 north, ranges 15 and 16 west, I run north, retracing the line between ranges 15 and 16 west, 6 miles to the established corner to townships 2 and 3 north, ranges 15 and 16 west, setting section and ¼-section post with mounds and pits, as per instructions.

The land for first 2 miles slopes gently south. 2nd

241 rate soil. The 3rd mile is over a ridge, with an elevation of about 50 feet above the level of the plain below. The last 3 miles is on table land sloping south, and is 2nd-rate soil. The last ½-mile terminates in broken hills covered with chemisal and sage.

Thence west, retracing the south boundary of township 3 north, range 16 west, 75 chains to the termination of the line at the foot of steep, broken and brushy hills running southeast from the spurs of the mountains, setting a ¼-section post (black walnut) in the old mound; made new pits, as per instructions, and at the termination of the line set a
242 buckeye post in old established mound with pits, as per instructions.

This line is hilly and broken, with chemisal and sage. Soil 3rd-rate.

From the corner to townships 2 and 3 north, ranges 15 and 16 west, I ran north, retracing the line between ranges 15 and 16 west, 1 mile and 30 chains to the termination of this line, setting the section, ¼-section and fractional section posts in old established corners with mounds and pits, as per instructions. On this line the 1st ½ mile is over brushy and dense growth of chamiso and sage. The balance
243 of the line is across a valley about 2 miles long, running nearly east and west, with 2nd-rate soil.

From the corner to townships 2 and 3 north, ranges 15 and 16 west, I ran, east on true south boundary of township 3 north, range 15 west, 5 miles, 26 chains, and 05 links to a box elder tree 6 inches in diameter, in the mouth of a gulch running north, 70° west, at the base of a rough steep mountain, setting the section and ¼ section posts and fractional post at the end of the line.

The 1st 2 miles of this line east is hilly and broken; has some good land in the narrow valley through which the road passes via Joseph Rice's

244 house from Los Angeles, to Fort Tejon and Owens river.

The next two miles is principally 1st quality land with two large meadows in which are numerous springs of pure water the most westerly of which, supplies the cultivated lands with water for irrigation, while from the most easterly the water is taken to irrigate the vineyards at the Mission.

The 5th mile is over plain, sloping gradually south, with coarse clayey soil for the 1st ½ mile, from that point to the termination of the line is through cacti and chapparal with poor soil.

245 EXTERIOR BOUNDARIES.

After having thus established the township lines within the limits of the rancho, I commenced to run the exterior lines connecting the stations of the official survey in conformity with your instructions, as follows to wit:

Begin at a live oak post in a rock mound, situate in the west side of a narrow valley running north 10° east, being station 1 of San Fernando, and marked the same S. F. station 1, and the southwest corner and station 4 of the Rancho Providencia, from which a live oak tree 10 inches in diameter
246 bears S., 67° east, 307 links distant. Another live oak tree 18 inches in diameter, bears south, 20° east, 520 links distant, another live oak tree 13 inches in diameter, bears south, 48¼° east, 314 links distant, and an elder stump 5 inches in diameter bears south, 23½° west, 103 links distant. Being the original bearing trees, the first two, to this station, the two latter being added by me.

Thence according to true meridian, the var. of the magnetic needle corresponding to 14° 50' east, north, 20½° west, retracing the official line of the Rancho San Fernando and at 159.43 chains to intersection of offset to township line in township 1

247 north, range 14 west, S. B. M., 35.95 chain east of corner to sections 16, 17, 20, 21, and at 210.68 to live oak tree 36 inches in diameter, blazed and marked S. F. 2 and P. No. 3.

I made a new blaze and marked the same S. F. 2 station. The land along this line for the first 120 chains has good soil; the balance is indifferent 2nd rate soil, and sandy.

Thence north 8° west still along the line of the official survey of Rancho San Fernando, and at 68.00 enter chapparal and cacti, and at 180.50 enter dry wash from Tujunga Cañon, course south,
248 30° east, and at 190.27 intersect the line between township 1 and 2 north, range 14 west, 4.93 chains west of corner to section 4, 5, 32, 33, and at 247.00 leave dry wash, course south, 20° east, and enter cacti and chapparal and at 388.00 to post in rock-mound marked T. 14 station, and southwest corner of the official survey of Rancho Tujunga situate in the southwest slope of a low hill; 527.00 enters dry wash of Tujunga, course south, 48° west; 579.00 leave dry wash of Tujunga and enter dry wash of Little Tujunga, course south, 15° west, 622.00 to a rock mound being station 3 of the official sur. of Rancho
249 ex-Mission San Fernando and station 1 of the official survey of Rancho Tujunga.

I marked red granite rock 20x14x12 inches, S. F. 3 station. Soil on this line 3rd rate. A sycamore 17 inches in diameter bears south, 50¼° east, 150 links distant, another sycamore 22 inches in diameter bears north, 13½° west, 391 links distant. Both original bearing trees.

Thence south, 81° west, along south base of mountain, 10.50, set a laurel stake in stone mound and marked the same S. F. 4 station.

Thence north, 82½° west, 21.50 set a laurel stake

250 in stone mound and marked the same S. F. 5 station.

Thence north, 74½° west, 64.00 and set an elder stake in stone mound and marked the same S. F. 6 station.

Thence south, 82° west 3.76, to intersection of line between ranges 14 and 15 west, township 2 north S. B. M., 177 links north of ¼ section corner between sections 1 and 6 and at 49.50 set an elder stake marked S. F. 7 in rock mound in the middle of an old road running south, 65° east, and north 65° west. A forked box elder tree 10 inches in
251 diameter bears south, 78¾° east, 182 links distant.

Thence north, 41° west, along S. W. slope of the mountains, 22.50 set a buckeye post in rock mound marked S. F. 8 sta.

Thence north, 20° west, 12.00 set a laurel stake in stone mound and marked the same S. F. 9 station.

Thence north, 5° west, along the west base of mt's 12.37, to intersection of line between townships 2 and 3 north, range 15 west, 18.12 chains east of corner to sections 1, 2, 36, and 35, set a laurel post in mound of rock and earth and marked the same S. F. in its west face, and at 53.50, to a
252 point in the left and east side of Pacoima Cañon set a sycamore stake in the point of bluff in rock mound and marked same S. F., 10 station.

Thence north, 50° east, 6.00, set a sycamore stake in rock mound and marked same S. F., 11 station, from which a sycamore tree 15 inches in diameter bears north, 11¼° west, 26 links distant.

Thence north, 16½° east, along the left and east side of the dry wash from Pacoima Cañon, 105.00 to old stake in rock mound marked S. F., 12 station. Soil from station 3 middling 2nd rate.

Thence north, 66° west, 17.00 cross Pacoima Cañon running south, 20° west, and runs along the

253 south base of San Fernando mountains, 80.00 to a point in the west slope of a small spur running north and south with low chemisal, set a laurel stake in stone mound and marked same S. F., 13 station. The centre of mission buildings bears south, 34¼° west.

Thence south, 86° west, still along base of the south slope of the San Fernando mountains, 80.00 to a point from which the centre of the main mission buildings at San Fernando bears south, 21¼° west, and at 276.50 set a laurel stake in a small stone
254 mound on the east slope of a low spur of mountains, marked stake S. F., 14 station. Soil 2nd rate.

Thence north, 54½° west, over low spurs of mountains running southwest, and at 26.00 to summit of main ridge of spur on the east side of a small valley running south, 10° east and north, 10° west; 52.00 across valley to rugged and steep precipitous mountains, and being unable to measure across the same with any degre of accuracy, I ran a traverse line from a point on this line at 29.00 chains as follows:

S., 45¼° W., 31 chs; thence S., 15½° E., 5.44 chs; S., 51° W., 3.64 chs; S., 69½° W., 23.00 chs., in mouth
255 of cañon leading to the San Fernando Pass, set traverse post marked IV; thence up cañon N., 45¼° W., 28.00 chs; thence N., 70½° W., 10.24 chs; N., 50¾° W., 10.50 chs; N., 24¾° W., 30.50 chs; N., 11½° W., 7.00 chs., house occupied by Akers bears north, 11½° west, about 75 links distant; thence N., 46¾° E., 5.77 chs; thence N., 55¼° E., 7.80 chs; N., 8¾° E., 16.80 chs., to point for station 15 set an elder post 4 ft. long and 5 inches square in rock mound, marked S. F., 15 station, making the course and distance, north, 54½° west, 132 chains from which a sycamore tree 15 inches in diameter bears south, 1°

256 east, 1.11 chains distant. A live oak 16 inches in diameter bears south, 34½° west, 3.53 chains distant.

The line from this point is over very steep, rugged and broken inaccessible mountains, and cannot be measured direct; therefore I take line from this station to post IV and run from thence on traverse courses to a black walnut tree 8 inches in diameter marked S. F., 16 station standing on the northern slope near the summit of a high mountain of the Santa Susanna range. My traverse line making the course and distance from station 15 to this point in a direct line south, 47° 40′ west, 184.47 chains,
257 while the official course gives south, 47¾° west, 182.00 chains, the difference being within the limits of admissible error allowed by law. I adopt the official course and distance as the true one between stations 15 and 16. Soil 2nd rate.

From station 16 I traversed along the most accessible line on the mountain and after having made my course and distance for station 17, and not finding any tree to correspond with the one called for in the official survey, I connected this traverse with station 18 of the official survey, and retraced the line from said station 18 to station 17, a post oak tree
258 22 inches in diameter marked S. F. 17 station and find that the true course and distance between said station 16, the black walnut, and station 17 the post oak to be north, 80¾° west, 154.63 chains.

Soil 2nd rate. I therefore adopt the result of my traverse between station 16, the black walnut and 17 the post oak tree, to wit: North, 80¾° west, 154.63 chains.

Thence south, 75° west, 26.50 to a post marked S. F. 18 station in a large corral lime rock mound, the post being considerably decayed I set a post, oak post marked S. F. 18 station on the summit of a high smooth mountain of the Santa Susanna range.

259 This corner has been a station of the United States coast survey.

Thence south, 38° west, decending west slope of ridge of mountains, 15.00 set a black walnut stake marked S. F. 19 station in said mound; thence south, 4¾° west, 62.50 set a black walnut stake marked S. F. 20 station in mound of rock.

Thence south, 77½° west, 47.00 chs, cross a stream of water 5 links wide in center of cañon course south, 35° west, 60.00 set black walnut stake marked S. F. station 21 in rock mound.

Thence south, 13½° west, 35.00 cross a stream of
260 water 10 links wide, course south, 70° west, 70.00 the house of Mormon bears east, 30 links distant, is therefore in the rancho, 88.00 set a sycamore stake marked S. F. 22 station.

Thence south, 7° east, 27.00 set a sycamore stake marked S. F. 23 station.

Thence south, 83° west, 1.00 set marked stake S. F. 24 station, 20 links from top of steep ridge on south slope.

Thence south, 7° east, descend into a ravine, 10.50 set marked stake S. F. 25 station.

Thence south, 24° east, 2.50 set marked stake S.
261 F. 26 station.

Thence south, 15° west, 5.00 set marked stake S. F. 27 station.

Thence south, 5° west, 1.00 set stake marked S. F. 28 station.

Thence south, 22½° west, retracing line of official survey, 7.00 set stake marked S. F. 29 station.

Thence south, 41° west, 3.50 across stream of water 50 links wide running south, 76° east, another stream comes in from north, 15° east, and joins stream last crossed at a point bearing north, 76° east, 3 chains distant, 6.00 set stake marked S. F. 30 station, on north slope of hill in chaparral.

262 Thence south, 38° west, retracing line of official survey 34.92 base of low sand rock hills east and west, 40.92 small adobe house of Thomas Feliz bears north, about 3 chains distant: 90.42 to intersection post of San Fernando on range line between 17–16 west, 1.27 chains north of corner to sections 7, 12, 13, 18, on south edge of road, and follow along same over level plain, 112.79 to a white oak 38 inches in diameter, house of Ramon Hereina, northwest 100 links, 174.42 cross overland stage road north, 43 west about 12 chs. from the east base of the Santa Susanna range of mts., house of Workman, about
263 30 chains south, 40° east, 272.00 dead white oak stump marked S. F. 31 station.

Thence south, 39° west, 8.30 to point in northern slope of low rolling hill, stake marked S. F. 32 station.

Thence north, 85½° west, retracing line of official survey, soil 2nd-rate, 2.00 a small adobe cabin at foot of hills, bears north, 18½° west, about 8 chains distant, 59.00 cross arroyo 20 links wide in center of ravine, comes from north, 7° west, and runs south, 27° east, 72.00 raised a mound of rock on top of large sandstone outcropping on east face of rocky moun-
264 tains of Santa Susanna, marked S. F. S. 11, set black oak stake marked S. F. 33 station. Soil 2nd-rate.

Thence south, 12½° west, over rugged rocky spurs of mountains, 130.50 cross arroyo 30 links wide in center of brushy ravine; also cross old road east and west, small valley about 8 chains wide, runs east about 20 chains to main valley, with chaparral and scattering oak timber at mouth of valley at junction with main valley. 182.30 intersect south boundary of township 2 north, 17 west, 15.92 chains east of corner to sections 3, 4, 33, 34, 205.10 to a forked white oak tree 25 inches in diameter, being station 34 of San Fernando, and station 4 and northwest

10923

265 corner of the official survey of the Rancho El Escorpion. Soil 2nd-rate. A white oak tree 25 inches in diameter bears north, 81¼° west, 3.20 chains distant; another white oak 20 inches in diameter bears south, 7° west, 1.68 links; another white oak 20 inches in diameter bears south, 31½° east, 167 links distant.

Thence south, 84° east, 105.34 to red oak post in a mound of stones marked S. F. 35 station, and station 3 and northeast corner of Rancho El Escorpion. Soil 1st-rate. A white oak tree 5 feet in diameter bears south, 5° E., 13.71 chains distant. Another white oak tree 52 inches in diameter bears south,
266 43½° east, 11.10 chains distant.

Thence south, 6° west, 105.34 to a redwood post marked S. F. 36 station, and station 2 and southeast corner Rancho El Escorpion. Soil 1st-rate. A white oak 27 inches in diameter in west slope of hill bears south, 35½° west, 9.66 chains distant. Another white oak 17 inches in diameter bears south, 31° west, 9.43 chains distant. Another white oak 15 inches in diameter on point of low hill bears north 17° east, 10.53 chains distant. This has an old cross marked on it. West end of small cabin on ridge of low hill bear north, ¾° west, about 4 chains distant.

267 Thence north, 84° west, 105.34 set a black oak stake marked S. F. station 37 in mound of rock and earth, being station 1 and southwest corner of Rancho El Escorpion, station at the east base of the ridge called Sierra Santa Susanna. Soil 2nd-rate.

Thence south, 32°37′ east, leaving the Rancho El Escorpion, over rolling grassy hills, 17.00 cross road from El Escorpion to Las Virgenes, north and south, 23.50 northeast corner of house of M. Leonis, west 60 lks., 29.50 across dry arroyo course north. A spring (fenced in) bears west 80 lks. distant, 155.00 cross a road; a house north about 8 chains, 161.51 to a live oak tree 45 inches in diameter marked on

268 west side with a D X. This oak is on the north side of old road from Los Angeles to Santa Barbara, course west. The road now runs on the east side of the tree up the bank 60 links from the X tree, then turns west and meets the old road, about 11 chains west of tree. Soil 2nd-rate. A red oak 45 inches in diameter bears north, 85° east, 64 links distant across road northwest and southeast in dry arroyo. A white oak 25 inches in diameter bears north, 11½° east, 181 links distant. A three-pronged black oak stump 5 feet high, 23 inc. in diameter, bears north, 39¼° east, 184 links distant. Marked on live oak S.
269 F. 38 station. The official course was south, 33½° east, 158.00 chains, making a difference of 53′ in the course and 3.51 chains in the distance which over good ground is beyond the limits of admissible error, and I adopt as the true course that which I have given above.

Thence south, 36¼° east, 44.96 intersects offset base line at a point 133.35 chains west of corner 58 chains south of corner to sections 13, 18, 19, 24, on line between ranges 17 and 16 west, township 1 north; 76.70 to blazed white oak tree 28 inches in diameter and marked as station 39, S. F.

270 A red oak 20 inches in diameter bears south, 53½° east, 131 links distant.

A white oak 25 inches in diameter bears north, 86° east, 194 links distant.

The official course called for here was south, 53½° east, 92.00 chains distant; the two stations being natural objects, I connect them as above set forth. Soil 2nd rate.

Thence north, 58½° east, 25.00 to live oak tree 35 inches in diameter, S. F. 40 station. A live oak 19 inches in diameter bears south, 77½° west, 5 chains distant.

A forked scrub red oak 25 inches in diameter,

271 bears south, 37¾° west, 194 links distant. Soil 2nd rate.

Thence north, 89° east, 39.00 to a brown sand stone rock 24x9x4 marked S. F. 41 station. Soil 2nd rate.

Thence south, 65¾° east, over rough mountain rge. 272.00 to a sand stone rock 12x12x10 marked S. F. 42 station at a high point on the mountain; broken mountains; 3rd rate soil.

Thence north, 87½° east, over rugged mountains, 327.97 to an irregular mound of rock on a very high peak about 800 feet above the San Fernando
272 valley. Found large sand stone rock, 24x16x8 inches, marked with letters S. F., marked same S. F. 43 station and made irregular rock mound. Broken mountains; 3rd rate soil.

The corner at sections 19, 24, 25, 30, on line between ranges 15 and 16 west, bears north, 23¾° west, 197.11 chains distant.

The official course here was north, 84° west, 345 chains distant, but by 2 traverses run by me I find the same to be as above set forth.

Thence south, 87° east, over rough, broken, brushy chapparal mountain, 680.50 to a sand stone rock
273 marked S. F. 44 station, buried in earth with a face 14 inches in diameter cropping out of same. Station on the south side of the road from Los Angeles to San Fernando, course northwest and on the summit of the Cahuenga pass from which sand stone rock boulder running north and south, bears south, 54½° west, 3.80 chains distant, buried sand stone 34x 10x8 inches, marked S. F. 44 station in stone mound.

The official course here called for was south, 83¼° east, 668.00 chains; after running three traverses I find the course and distance as near as

274 may be to correspond to that herein set forth: broken mountains; 3rd rate soil.

Thence north, 74° east, 1.50 cross overland stage road north, 35° west, house of Faustino, bears north, 37° west, 7 chains distant, 61.34 to stake in stone mound S. F. 1 station, and station 4, La Providencia, the point of beginning. Containing 121,542.36 acres. Making the actual distances run to connect the official stations on true courses and distances by direct and traverse lines, 83 miles, 47.77 chains.

Therefore in conformity with further written instructions from your honorable body, I run a
275 temporary divison line *as* the request of the plaintiff and defendant Celis, beginning at a sycamore post in a rock mound on the eastern exterior boundary of the Rancho San Fernando, at a point north, 8° west, 271.30 chains from station 2 of the official survey and run west, parallel to the south boundary of township 2 north, range 14 west, 143.84 chains to the corner to sections 25, 30, 31, 36, on line between ranges 14 and 15 west, township 2 north of the San Bernardino meridian.

Thence south, 89° 36' west, on a line parallel to the south boundary of township 2 north, range 15
276 west, 476.64 to the corner to sections 25, 30, 31 and 36, on line between ranges 15 and 16 west, township 2 north.

Thence north 20 chains [underscored and interpolated.]

Thence south, 89° 33' west, on line parallel to the south boundary of township 2 north, range 15 west, 476.10 to the line between ranges 16 and 17 west, 20 chains north of the corner to sections 25, 30, 31 and 36 on line between ranges 16 and 17 west, township 2 north.

Thence west, 202.28 to the western exterior boundary of the Rancho San Fernando and set a black

277 oak post in rock mound, from which station 34 of the official survey of the Rancho San Fernando bears south, 12½° west, 125.40 chains.

Containing south of this line 65,372.58 acres and
" north " " " 56,169.78 "

Total area of the 2 divisions, 121,542.36 acres.

Making the actual distance run on this temporary divison line 16 miles, 38.79 chains.

From the foregoing I am of the opinion that the land on the whole, is of average good, 2nd rate soil. There are some tracts of land of 1st quality soil, to
278 wit: A portion of township 1 north, range 17 west; a strip of land along the north base of the spurs of mountains, coming from the south in twn. 1 north, ranges 14 and 15 west; also a portion of land in township 3 north, range 15 west, containing about 1000 acres.

The cacti north of the temporary division line, is about one-fifth more than in the portion south of said line, and will about equal in quality and quantity the excess of land on the southern boundary in the mountains which is covered with dense chapparal.

279 As the commissioners have visited all portions of the Rancho San Fernando, and have from time to time been shown by me the different stations of the same, and the township and range lines therein, they will have no difficulty in recognizing the different classes of land herein set forth as the true estimate to be placed in making the division of the rancho.

EXCEPTIONS AND RESERVATIONS.

Exception No. 1, as follows, to wit:

Tract No. 1 or lot 38; tract No. 2 or lot 39; tract No. 3 or lot 40; tract No. 4 or lot 41; tract No. 5 or lot 42; tract No. 6 or lot 43; tract No. 7 or lot 44;

280 tract No. 8 or lot 45; as set forth in the interlocutory decree I surveyed as follows:

Begin at the west corner of the adobe wall of tract No. 2, lot 39, being the vineyard in rear of main mission building from which the quarter section corner between sections 32 and 5 in townships 3 and 2 north, range 15 west, San Bernardino meridian bears north, 17° 46' west, 104 chains and 70 links distant.

Thence according to the true meridian, the variation of the magnetic needle being 15 degrees 03 minutes east, north, 74° east along the adobe wall
281 28.97 chains to north corner of same and set granite rock 12x12x10 marked 2 station.

Thence south, 15° east, along eastern wall of vineyard 11.97 to end of adobe wall and set granite rock marked 3 station.

Thence south, 27° west, along adobe wall 2.66 set rock marked 4 station.

Thence south, 83° west, 1.75 set stake marked 5 station at corner of adobe wall.

Thence south, 75¾° west, 1.74 set stake marked 6 station at corner of wall.

Thence south, 63½° west, 3.51 set stake marked 7
282 station at corner of adobe wall.

Thence south, 76° west, 1.90 set stake marked 8 station at corner adobe wall.

Thence south, 78¼° west, 1.94 set stake marked 9 station, at corner of adobe wall.

Thence south, 57¼° west, 5.22 set stake marked 10 station, at corner of adobe wall.

Thence south, 70° west, 5.62 set stake marked 11 station at corner of adobe wall.

Thence north, 35½° west, 16.97 to point of beginning, containing 38.23 acres.

Tract No. 1, lot 38. Begin at a marked granite rock 15x8x4 at the southwest corner of main mis-

283 sion building, variation 15° 03′ east, and run north, on west side of building, 1.69 chains to granite rock 8x4x4, 2 station.

Thence south, 89° east, 1.63 to granite rock 12x8-x4, 3 station.

Thence north, 64° east, 1.77 to granite rock 13x-8x5, 4 station.

Thence north, 20° west, 4.95 to granite rock 11x-8x6, 5 station from which station 4 of tract No. 2, lot 39, bears north, 11¾° east, 139 links distant.

Thence north, 70° east, 2.09 to granite rock 10x-8x4, 6 station.

284 Thence south, 22° east, 0.95 to granite rock 8x4x3, 7 station.

Thence north, 71½° east, 0.32 to granite rock 8x4-x3, 8 station.

Thence south, 19° east, along wall of church, 0.13 to granite rock 13x8x7, 9 station.

Thence north, 70° east, 3.44 to granite rock 10x8-x4, 10 station.

Thence south, 17° east, 1.86 to granite rock 12x-11x4, 11 station.

Thence south, 71° west, 0.61 to granite rock 8x6-x3, 12 station.

285 Thence south, 15½° east, 4.00 to conglomerate sandrock rock 8x8x5, 13 station.

Thence south, 77° west, 4.50 to granite rock 10x6-x4, 14 station.

Thence south, 3½° east, 1.39 to granite rock 17x8-x7, 15 station.

Thence north, 89° west, 4.29 to point of beginning, containing 3 95-100 acres.

Tract No. 3, lot 40. Begin at station 1 of tract No. 1, lot 38, and run for connection line south, 58° west, variation 14° 35′ east, 4.32 to northeast corner of old adobe house and point of beginning, set sand stone 12x8x3, 1 station.

286 Thence south, 25° west, 2.42 to sand stone 17x11-x4, 2 station.

Thence north, 65° west, 0.54 to granite rock 17x-17x8, 3 station.

Thence north, 25° east, 2.42 to granite rock 17x8-x7, 4 station.

Thence south, 65° east, 0.54 to point of beginning, containing 13-100 acres.

Tract No. 4, lot 41. From station 3 of tract 3, lot 40, run south, 25° west, 0.44 to station 1 and northwest corner of tract No. 4, lot 41, set a granite rock 8x5x4, 1 station.

287 Thence south, 25° west, 2.42 to granite rock 17x-11x7, 2 station.

Thence south, 65° east, 0.54 to granite rock 5x3x3, 3 station.

Thence north, 25° east, 2.42 to granite rock 17x6-x5, 4 station.

Thence north, 65° west, 0.54 to point of beginning, containing 13-100 acres.

Tract No. 5, lot 42. From station 4 of tract No. 3, lot 40, run north, 65° west, 0.44 to granite rock 7x7x4, 1 station.

Thence north, 65° west, 3.32 to sandstone 8x8x5,
288 2 station.

Thence south, 25° west, 0.54 to granite rock 14x-8x7, 3 station.

Thence south, 65° east, 3.32 to sand stone 15x7x5, 4 station.

Thence north, 25° east, 0.54 to point of beginning, containing 18-100 acres.

Tract No. 6, lot 43: From station 2, tract 4, lot 41, run north, 65° west, 0.44 to granite rock 8x7x6, 1 station.

Thence north, 65° west, 3.11 to granite rock 7x7x5, 2 station.

289 Thence north, 25° east, 0.54 to granite rock 8x6x4, 3 station.

Thence south, 65° east, 3.11 to granite rock 8x6x4, 4 station.

Thence south, 25° west, 0.54 to point of beginning, containing 16-100 acres.

Tract No. 7, lot 44: From station 15, tract No. 1 lot 38, run south, 57¼° east, 3.67 to granite rock, 1 station.

Thence east, 0.71 to granite rock 9x9x8, 2 station.

Thence south, 7.00 to granite rock 17x12x8, 3 station.

290 Thence west, 0.71 to granite rock 11x8x7, 4 station.

Thence north, 7.00 to point of beginning, containing 50-100 acres.

Tract No. 8, lot 45: From station 2, tract No. 5, lot 42, run south, 58° east, 8.33, set a syenite rock 21x11x8, 1 station.

Thence south, 13° west, 18.17, set a granite rock, 8x6x4, 2 station.

Thence south 78° east, 18.48, set a granite rock 12x5x4, 3 station.

Thence north, 12¼° east, 18.20, set a granite rock 18x7x5, 4 station.

291 Thence north, 78° west, 18.20 to point of beginning, containing 33 27-100 acres.

EXCEPTION NO. 2.

Second Exception or Reservation.

The garden, orchard and vineyard, which lie immediately in front of the principal mission building, with the boundaries as fixed by the adobe walls and wooden fences as they were July 2nd, 1869, which enclosed the same, is identical with tract No. 8, lot 45. And the vineyard and orchard which lie in rear of the principal mission building with the boundaries thereof as the same were on the 2nd day of July, 1869, fixed by the adobe walls and

292 fences then including the same is identical with tract No. 2, lot 39.

The land lying between the said garden, orchard and vineyard in front of said principal mission building, and the said orchard and vineyard in rear of said mission building, I surveyed as follows:

Begin at the south corner and station 11 of tract No. 2, lot 39, and run south, 56½° east, 9.87 to granite rock at station 2, tract No. 5, lot 42.

Thence south, 58° east, 8 33 to station 1 of vineyard tract, No. 8, lot 45.

Thence south, 78° east, 18.18 to station 4 of vine-
293 yard tract, No. 8, lot 45.

Thence north, 15½° west, 21.52 to granite rock 11x9x5, marked F. station.

Thence north, 61¾° west, 7.10 to station 3 of tract No. 2, lot 39, (vineyard).

Thence south, 27° west, 2.66 to station 4, of tract No. 2, lot 39.

Thence south, 83° west, 1.75 to station 5 of tract No. 2, lot 39.

Thence south, 75¾° west, 1.74, station 6 of tract No. 2, lot 39.

294 Thence south, 63½° west, 3.51 to station No. 7 of tract No. 2, lot 39.

Thence south, 76° west, 1.90 to station 8 of tract No. 2, lot 39.

Thence south, 78½° west, 1.94 to station 9 of tract No. 2 of lot 39.

Thence south, 57¼° west, 5.22 to station 10 of tract No. 2, lot 39.

Thence south, 70° west, 5.62 to station 11 of tract No. 2 of lot 39. Containing 41 86-100 acres.

EXCEPTION NO. 3.

Third Exception or Reservation.

Ranho El Encino: From a black walnut tree 12 inches in diameter marked E. No. 1, one of a cluster

295 of four black walnuts standing on the summit of a low isolated hill near the foot of the mountains on south side of the valley of San Fernando, and run north, variation, 14° 43′ east, over level plain 210.68 to post in mound, marked E. 2 and S. F.

Thence west, over level plain 132.25, intersect line between ranges 15 and 16 west, in township 1 north, San Bernardino meridian, 14.65 chs. south of corner to sections 1, 6, 7 and 12, 210.68 to redwood post mound and pits marked E. No. 3 and S. F.

Thence south, over level plain 88.75 cross stage road from Los Angeles to Santa Barbara north,
296 50° west, and south, 50° east, 89.50 pass the east edge of a small isolated hill in plain, 147.10 cross old Los Angeles and Santa Barbara stage road, north, 70° east, and south, 80° west; 150.50 pass the extreme west edge of the oak grove of the Encino; 183.00 base of hills and ascend; 199.00 top of hill and along ridge; 210.68 to post on rock mound on east slope of ridge about 100 links from top, marked E. No. 4 and S. F. from which a white oak tree 8 inches in diameter, bears north, 54° east, 17 links distant.

Thence east, over broken rolling hills, 81.45,
297 intersect line between ranges 15 and 16 west, in twp. 1 north, 14.57 chains north of corner to sections 19,24, 25 and 30; 212.78 to the point of beginning, containing 4460.73 acres.

EXCEPTION NO. 4.

Fourth Exception or Reservation.

Maria Los Angeles Feliz de Burrows tract: Begin at a mound of rocks from which the quarter section corner between sections 32 and 5, townships 3, 2 north, range 15 W., San Bernardino meridian, bears north, 16¾° west, 42.86 chains distant. And run north, 79° west, 41.74 chs. to rock mound marked sand rock M. F. B., 2 station.

298 Thence south, 11° west, 42.23 to stake in stone mound marked M. F. B., 3 station.

Thence south, 79° east, 42.34 to a granite rock 32x20x16, M. F. B., 4 station.

Thence north, 10° east, 42.35 to point of beginning, containing 177.75 acres, or 1000 varas square. Being the same tract on which the said Burrows now resides, and situate at the mouth of the Cañada. The house of said Burrows being in the center of the tract.

SUPPLEMENT TO EXCEPTION NO. 2.

The 1000 acres adjoining and including the gar-
299 den, orchard and vineyard which lies immediately in front of the principal mission building, and 1000 acres of land including the vineyard and orchard which lie in rear of the main mission building.

I hereby surveyed and segregated as follows, to wit: From granite rock marked M. F. B. 4 station, being the southeast corner of Maria Los Angeles Feliz de Burrows tract, marked it P. R. 1, run south, 80½° east, variation 14° 50' east, 55.45 chs. to granite rock station 2, of tract No. 2, lot 39, vineyard in rear of principal mission building 78.00 to post in mound, P. R. 2 station.

300 Thence south, 12¼° west, 32.53 to granite rock station 4 of tract No. 8, lot 45, (vineyard in front of principal mission building), 50.73 to granite rock, station 3 of tract No. 8, lot 45, 148.50 to granite rock 32x16x16, P. R. 3 station in earth mound.

Thence north, 80° west, over level plain 140.34 to granite rock 17x16x15, P. R. 4 station, in earth mound.

Thence north, 12¼° east, over level plain, 148.50 to granite rock 12x8x5, P. R. 5 station in rock mound.

Thence south, 79¼° east, 20.00 to stake in stone mound, station 3 of Maria Los Angeles Feliz de

301 Burrows tract, 62.34 to point of beginning, containing 2076.97 acres,

From which quantity of 2076.97 acres there is to be excluded the 6 buildings tracts at the mission establishment, 5.05 acres and vineyard tract, No. 8, lot 45, of 33.27 acres, and the vacant land between the vineyards, less the 6 building tracts above mentioned of 36.81 acres, a total of 75.13 acres, leaving a clear area including tract 2, lot 39, within the lines of the 2000 acre reservation of 2001.84 acres.

The 2000 acre reservation was laid out in a rect-
302 angular shape, with vineyard tract 2, lot 39, included in boundary and quantity, in conformity with the deed of Pio Pico to the plaintiffs, and also in the findings of the referee, H. K. S. O'Melveny, Esq., to which I had recourse as explanatory of the interlocutory decree in this case.

Tract 8, lot 45, the vineyard in front of the principal mission building and vacant lands between the vineyards are excepted in quantity, but included within the boundaries thereof.

In conformity with your instructions of March, 1871, I run the division line as in said instructions directed and numbered the stations from the point
303 of beginning to the end of each division, as in said instructions directed as follows, to wit:

Beginning at a point on the eastern exterior line of the Rancho ex-Mission de San Fernando, a live oak tree 36 inc. in diameter, station 2 of the official survey of said Rancho and station 3 of the final and official survey of Rancho Providencia, and run thence, having marked the same H. A. 1 station, north, 8 degrees west, along the line of the official survey of said Rancho ex-Mission San Fernando, at 190.27 chs. intersect the line between township 1 and 2 north, range 14 west, of the San Bernardino merid-

304 ian, and at 271.30 to a sycamore post in rock mound marked H. A. 2 sta.

Thence west, setting mile and ½ mile posts in mounds of rock and earth, and at 143.84 to the corner of sections 25, 30, 31, 36, a line between range 14 and 15 west, township 2, north.

Thence south, 89° 30′ west, 476.64 to stake, the corner to sections 25, 30, 31, 36, on line between ranges 15 and 16 west, township 2 north, setting mile and ½ mile posts at the respective section corners.

Thence south, 89° 33′ west, on line parallel to the south boundary of township 2 north, 16 west, 476.10
305 to post, the corner to sections 25, 30,31 and 36, on line between ranges 16 and 17 west, township 2 north.

Thence west, on line parallel to the south boundary line of twp. 2 north, range 17 west, 206.71 intersect the western exterior boundary of Rancho ex-Mission San Fernando, and set a post oak post marked H. A. 3 station.

Thence south, 12½° west, along the line of the official survey of said Rancho ex-Mission San Fernando and at 104.92 to the forked white oak tree 25 inches in diameter, station 34 of the official survey of
306 said Rancho ex-Mission San Fernando, and station 4 of the official survey of the Rancho El Escorpion, marked the same H. A. station; and from thence marked every station running southerly along the exterior boundaries, H. A. *seriatim* to the point of beginning.

The boundaries which are heretofore set forth in this report, containing 64,011.53 acres saving and excepting therefrom a tract called Rancho El Encino, containing 4460.73 acres, leaving for southern division a clear area of 59,550.80 acres.

Then for the northern division commence at station 3 of the official survey of Rancho ex-Mission

307 San Fernando, and following the exterior official lines of the same and numbering the stations *seriatim* to station 33 of the official survey.

Thence south, 12½° west, following the line of the official survey 100.18 to station H. A. 6 of the division line.

Thence east, along the division line 206.71 to line between ranges 16 and 17 west, township 2 N.

Thence north, 89° 33′ east, 476.10 to line between ranges 15 and 16 west, twp. 2 north.

Thence north, 89° 36′ east, 476.64 to line between ranges 14 and 15 west, twp. 2 north.

308 Thence east, 143.84 to post in rock mound marked H. A. 2 station.

Thence north, 8° west, 350.70 to the point of beginning, containing 57,530.83 acres, saving and excepting therefrom the following exceptions or reservations, to wit:

Tract No. 1 or lot 38 building,	3.95
" " 2 " " 39 vineyard,	38.23
" " 3 " " 40 building	0.13
" " 4 " " 41 "	0.13
" " 5 " " 42 "	0.18
" " 6 " " 43 "	0.16
" " 7 " " 44 "	0.50
309 " " 8 " " 45 vineyard,	33.27
1000 vara tract of Maria Los Angeles Feliz de Burrows,	177.75
Two reservations on Pio Pico of 1000 acres each,	1963.61
Vacant land between vineyards in rear and in front of main mission building less the building lots above numerated,	36.81
Making a total of	2254.72 acres

to be deducted from the full area of the northern division, to wit: 57,530.83 acres, leaving a clear area therein of 55,279.79 acres.

310 Nearly all the time I was executing the foregoing survey, the commissioners were present, and verified the above work, and noted carefully the character and class of soil and land, and growth of same; and directed the survey to be made in a manner the most beneficial to the parties in interest.

I am under many obligations to the members of the commissioners for their uniform courtesy and kindness in aiding me in my survey by their directions and advice in all difficulties which arose from discrepancies between the lines as shown by the official survey and the lines as they actually exist
311 upon the ground.

All of which is respectfully submitted together with the charges for survey and office work; also a topographical map of the said Rancho ex-Mission de San Fernando, with the exceptions or reservations as in the interlocutory decree set forth, with the division line between the allotments to plaintiff and defendants being a part of, and explanatory of my foregoing report.

WM. P. REYNOLDS,
Surveyor.

Los Angeles, March 24, 1871.

312

Map 14
Ex 29

313 Plaintiff also introduced eleven conveyances from various persons to various persons, which vested in the plaintiff in this action whatever title to the property described in the complaint in this action passed from the United States government to Eulogio de Celis, under the patent hereinbefore set out; and plaintiff proved that it was, at the time of the commencement of this action, and still is, a corporation duly formed under the laws of the state of California, having its office and principal place of business in the city and county of San Francisco, state of California, and a branch office in the city of
314 Los Angeles, county of Los Angeles, state aforesaid.

The description in the complaint in this action is the description by which the south half of the San Fernando ranch was set aside to the San Fernando Farm Homestead Association in the partition case hereinbefore referred to, and said description is according to the Reynolds' survey.

Plaintiff also proved that the San Fernando Farm Homestead Association paid to Pio Pico one hundred and fifteen thousand dollars ($115,000.00), in 1869, for an undivided half of the San Fernando rancho; that the term of existence of the San Fer-
315 nando Farm Homestead Association expired, and that the present plaintiff was incorporated by the same persons who owned the stock in the Farm Homestead Association.

H. C. WILEY,

called on behalf of plaintiff, sworn, and testified as follows:

I came to Los Angeles in 1852, and lived in the country ever since except four years spent in the territory of Arizona. For four years was undersheriff of the county. Am familiar with the San Fernando ranch. Lived there for five years, beginning the first day of August, 1858. I had charge of

316 the ranch for Don Andres Pico, who then claimed the entire ranch. I had general supervision of the whole ranch, stock and running the ranch in general. He was there very little of the time, and it all devolved upon me, and I was familiar with the whole ranch and its boundaries. The Las Virgines grant and the San Vicente bounded it on the south.

(Witness here identified a lease shown him, purporting to be a lease from Andres Pico *et al.*, to Hazard and Maxey, dated May 16, 1860.)

I know the parties to that lease. They went into possession of the lands described, which are a part
317 of the Rancho San Fernando, put a crop of grain in and havested it. I was frequently along the southern boundary line of the San Fernando, which is the north boundary of the San Vicente. I had to visit various parts of the ranch very frequently, on account of collecting stock and rents, and such things.

(Witness points out a point at station marked "Sandstone rock, S. F. 42" on the Reynolds' map as being the southern boundary of the ranch, and testified that in reference to the Encino shown on said map, the lands west of it were used largely for stock,
318 east of it for stock and also for grain and garden spots.)

Witness continued: We claimed that the line of the Virgines rancho was the boundary of the San Fernando, and held up to that line. The Sepulvedas were then in charge of the San Vicente. When we were rodeoing, we considered that after we got over the comb of the mountain we were on the San Fernando ranch, and vice versa. Taking stock on the San Fernando, after they had passed the summit or comb of the mountain they were on the San Fernando ranch, and then the Las Virgines at the line of the Virgines ranch. The parties in posses-

319 sion considered the comb of the mountain the San Fernando and the San Vincente line, and that line was understood to be the line by the different ranchers.

While I was there no one else occupied the place but Don Andres Pico and myself for him, except those that I leased to and those who had reservations within the exterior limits of the ranch, such as the Escorpion and the Encino, and several other small reservations near San Fernando. When I went there, there was five or six thousand head of cattle, probably two thousand head of horses, and 320 some sheep and other stock on the place. I never had any trouble with parties out there, except once or twice people came in there and located and I ejected them. I don't think I had to commence suit against any of them. They went off, as a general thing, peaceably. There was one party located right close to the Cahuenga, between that and the summit of the hill, near the pass, and built a little house there, and I went and had a talk with him and he got up and went off. I didn't have any trouble with them. I had to threaten them with suit, though, finally, before they would go, but they 321 concluded to go without suit.

There was another instance at the Calabasas. A party located there, and General Pico and myself went over, and I had a talk with them, and they moved over onto the opposite side of the arroyo and outside of the San Fernando rancho. With these exceptions, there was no interruption of our exclusive possession. I left there in 1863.

Cross-examination.

I got my information in regard to the boundaries from the surveyor that surveyed the ranch, two of the surveyors, rather. Don Andreas Pico notified me and showed me where the boundaries of the

322 ranchos was, and after that I got my information from Mr. Hancock, the gentleman who surveyed the ranch, and also from Mr. Hadley. They gave me a general idea. There were no definite marks on the ground more than where they showed me. I suppose there were survey marks on the ground. Of course the ranch had only been surveyed. I saw some survey marks on the north side of the ranch and one on the south side. There was a monument right at the Cahuenga Pass, on the summit, near the San Fernando Pass.

(Witness points to a line on the boundary, as
323 shown by Reynolds' map, near Cahuenga pass.)

That monument was to the right of the road. I think it was a stone monument, as near as I can remember, and Mr. Hadley and Mr. Hancock both showed me in travelling where the line was, and then he told me it followed over the ridge.

(Witness shows, along summit of the San Fernando mountains, in the direction of the Virgines).

I never travelled directly along the top of the ridge of the mountain. It was brushy, and a portion of it very bad travelling. But my understanding was that the summit of the mountains was the south
324 boundary of the ranch. The northern monument spoken of by me was an observation point there that they called *hoja de lata*—a tin monument. I obtained my information from the parties who surveyed the land.

There was some surveys made on the ranch by Thompson when I was there. I think there was some surveys finished after I got there, but I was so busy I didn't pay much attention to them.

Re-direct examination.

I suppose that the south line of the San Fernando, as recognized while I was there, was about two miles

325 from the south line of the Encino ranch. I never measured it or stepped it.

JAMES B. LANKERSHIM,

called on behalf of plaintiff, sworn, and testified as follows:

Reside in Los Angeles. Was a banker up to the first of January, and am still connected with the bank. Have lived in Los Angeles county since 1873, and am familiar with the San Fernando ranch. Resided on it from 1873 until about 1880 continuously, and after that I went out there at different
326 periods, and am familiar with it. In 1873 I went on the San Fernando grant as superintendent of the southern half, to look after the lands and the stock there. That was after the ranch was partitioned. My duties were to take care of the live stock on the ranch, and to take care of the ranch lands. There was some tenants there, and they had boundaries, and I saw that the tenants kept to their boundaries, and that the ranch lands were protected in every way.

I had a copy of the Reynolds map for my guidance. Soon after I went there, I got such information as I could from parties who knew in regard to the lands.
327 Following that up, I got a copy of this map as soon as I could, and my custom was, when I rode over the ranch, which was seldom less than once a week to all portions of it, to take that map with me, and if I saw travelling bands of stock, or men that I thought might trespass on the ranch, I showed them that map, and showed them the boundaries, so they would have no excuse for trespassing. I also had a map, so that the lessees—I think there were six or eight lessees at that time—would not trespass on each other. In leasing to parties, I took them down to the boundaries and the monuments, and showed them their lines, and riding along the valley you

328 could see pretty nearly the outlines of the exterior of the ranch.

I would sometimes find men a short distance within the ranch, and sometimes a longer distance from the road, claiming that they did not know who the lands belonged to, and I would notify them as to the lands belonging to us, and show them the boundaries. There was also occasionally a man who wanted to settle there. In one or two cases I went to them, and by a statement of the case they vacated the lands. There was only one man in all the time I recollect, some ten or twelve years that I
329 was there, who persistently maintained that he was going to settle there. We brought suit against him and he was ejected. His name was Moody, and he is now in this city. I maintained absolute possession of the whole ranch during the time I was in charge.

I know the lines of the Virgines ranch. Miguel Leonis was then in possession of it. He only claimed up to our line. He showed me the monuments as they exist on the Reynolds map, and claimed to hold up to them. I know the Rancho El Encino. It is entirely surrounded by our land. The Cahuenga
330 pass is southeast from the Encino.

(Witness indicates the southeast corner or part of the ranch as marked upon the Reynolds map).

And the Virgines is the southwest corner.

(Witness indicates the Virgines as shown on the Reynolds map).

I am familiar with the Escorpion rancho. It is as delineated on the Reynolds map.

While I was on the ranch we held up to the northerly line, according to the partition decree. This partition line is indicated by the blue line running east and west on the Reynolds map, which is marked on the map, "South 89° 36' west, 407.64."

331 There was a camp of some of the men who rented part of the northern half of the ranch close to the line, and I frequently went there. I lived on the ranch constantly for seven years, and for five or six years subsequent I went out there every two or three weeks and looked after the lands, and there was no disturbance in our possession during that time other than as I have related. Within the last three or four years, I have visited the place probably once in two months. The only disturbance of the possession was what occurred a year or two ago, but I did not go out to the lands during that time.

332 When I went to the ranch in 1873, we had some improvements in different parts of it, and about two years after that the company and Mr. Van Nuys, as a tenant and part owner, began extensive improvements, consisting of buildings for the men to live in, extensive barns, and cultivation of land on a large scale. This cultivation began in about 1875—somewhere along there. The first year they cultivated 1800 acres, and it kept on increasing until it was nearly 30,000 acres under cultivation. This point was reached about four or five years ago. Wheat and barley were the principal grains raised, and the
333 wheat was used for milling purposes and sold in the city here for flour, the mill of the company being located here. The mill was operated by the company from about 1876 continuously.

The buildings were scattered over that portion of the ranch allotted to the San Fernando Farm Homestead Association, from one end to the other, and the cultivation extended from the east line to the west line of the ranch, entire length of it, embracing all of the valley land. The hills were not cultivated to any great extent, but were reserved for stock. The state of this cultivation has been kept up since 1876. I should think there were 20,000 acres

334 in grain in 1891-2, all by the corporation, all of which was harvested by the company and utilized as I have herein stated. All of the land that was not cultivated was used for pasturage. Each ranch had its machinery. At the start, individual men had a small interest in the farming, but that was afterwards purchased by the ranch, and the entire work was carried on by the company.

I recollect a time when a large number of people went upon the ranch, a year or two ago. I went out to see them. This property was under cultivation at the time. I don't remember the exact acre-
335 age. I don't know any of the defendants, either Rose D. Mosher, F. M. Culp, J. B. Cox, Joe Mazet, John J. Shore, Henry C. Vincent, R. J. Tarbell, or Edwin G. Carter.

Cross-examination.

I went on the ranch in 1873 and spent seven years there, almost entirely on the ranch, only going away on Sundays and sometimes visiting San Francisco two or three weeks in the year. I lived in what was known as the Felipe Garnier house, about four miles from Cahuenga Pass. My duties on the ranch were to take care of the stock that was there
336 and look after the tenants who leased the lands, and keep travelling bands of stock and other people from the lands. I suppose I visited the southern part of the ranch nearly once a week. My custom was to drive twice a week over all the ranch, and some of those further ranches I may not have gone to more than once a week, but that was my custom. There were no fences at that time on the ranch.

I don't know anything about any map except the Reynolds' map, and am satisfied it correctly represents the boundary line of the patent. I know it does, and found it from my experiences with other grants and from the formation of the country and

337 from the monuments that were there. I don't know where the Hancock survey is. I know where the Reynolds' survey is. People tell me that the Hancock and Reynolds surveys are the same. I am sure that the Reynolds line embraces the same land as the Hancock line. I am not a surveyor. I was not with Hancock when he made his survey, and don't know anything about Mr. Hancock except I know him personally. I didn't see the Reynolds survey made, but I went over the line with Bill Reynolds and identified his monuments. After I had had this map two or three years
338 people began telling me that there were other surveys, and things of that kind, which I didn't believe, so I went in town and got John E. Jackson—he is a surveyor and been here twenty years—and he went and got Bill Reynolds. Bill Reynolds was alive, and he got all his field notes and everything, and he started in. I had previously been over the line with another surveyor, but I went along with Bill Reynolds and Jackson; and went up here, (showing point in south boundary of the Reynolds survey), that way, and went up the side of the mountain here, and then Bill Reynolds got a little shaky
339 about where the lines were, and we went right along and showed him the very marks he made himself, and we followed that up until we got to the top of the mountain here, and when we got to the top of the mountain here I left him with John E. Jackson and followed down the survey. There were cases in which Bill Reynolds did not identify his own monuments, and I found them. We went together to them. Bill Reynolds said he made the monuments himself that I showed him.

As I stated, I had this map here some two years before I saw Bill Reynolds, and from the fact people would tell me different thing about the ranch, I

340 finally got Bill Reynolds started with me from the beginning. He had all his field notes and we identified the different monuments, and as I say, there was some places in which he was a little shaky. I had been over the lines, and showed him there was the remnants of his monuments, and he consulted his field notes and said they were. I left him with John E. Jackson. Some of the marks I showed him are there to-day. In this corner of the ranch here, which is the corner of the Providencia (showing on Reynolds map) there is a tree marked, and my impression is that it is a live oak tree. This,
341 mind you, was twenty years ago, but that is my impression. It had some marks on it, and I went right down to it, and then Reynolds and Jackson conferred with their field notes and they pointed me to a stake that was about ten or twenty feet from that, and we went down to that, and there was the marks of the Providencia line, San Fernando No. 1. That is the starting point. We started from there and came up to this point here (showing line on south boundary, near Cahuenga pass). When I went there in '73 there was a stake set on the side of the road, a small wooden stake with some rocks
342 around it. It was a distinctive mark of some kind like a stake. And in course of time the road caved in there and it fell down. Then Bill Reynolds or Jackson went over here (showing on map sandstone rock) and there was a mark that I never seen before cut into a granite rock, and I presume that is in there yet. And they said that is a bearing mark, and they measured back and located this corner, and then from that we started up over the mountain, and as we went across the mountain in a westerly direction we came across trees that were blazed. From there to this point (showing top of San Fernando range), where we went to was two or three

343 miles up steep hills, and we would come across a tree, and we would examine around it, and we would see a blaze, and Bill Reynolds would go to it and say he made that blaze on that tree. That was not on any map.

As I say, when I saw the Hancock map, I didn't know anything about it. I never saw any trace of any survey on those lines except that Reynolds survey, and wherever I went I could locate his monuments, and held by them. We have always held by them. We could tell his monuments, for the reason that we went in the field to locate them, and followed
344 them with the map. We would find a monument, and he, Reynolds, told me that he had been there and made that monument. Here was another monument, and when I got through here (pointing to southwest corner of the ranch) we saw monuments coinciding exactly with the map.

There were live oak trees, and these trees that I speak of here were trees on which there were blazes made where the line run through. They were not put down on any map. There is nothing authoritative to them, excepting a man walking along the line and knowing he is on the line, he sees the marks
345 right there, and it shows him it is the place. Reynolds was with me and told me he made these marks. In some places I had to show them to him.

I am one of the stockholders of the plaintiff, and naturally I feel interested in this suit.

JOHN J. SHORE,

called on behalf of plaintiff, sworn, and testified as follows:

I do not know Joe Mazet nor Henry C. Vincent. I have known R. J. Tarbell for something like two or three years. Don't know Edwin C. Carter. Don't know J. B. Cox nor F. M. Culp. Don't know Rose B. Mosher.

346 I am one of the defendants in this case. What I claim is in section 22, range 15—don't remember the township, though. Since you state it, I claim the southeast quarter of section 22, township one north, range 15 west. (At request of attorney for plaintiff, witness locates the place indicated by him on map, plaintiff's exhibit 30, the quarter section being marked "John J. Shore.")

I was on that land just two months. Went on on the 8th of October and left about the 10th of December, 1891.

Cross-examination.

347 Left there because there was an injunction served upon us enjoining us from trespassing upon the land, or building, or tramping down the grass, or doing anything.

L. D. C. GRAY,

called on behalf of plaintiff, sworn, and testified as follows:

Have resided in Los Angeles for nine years. Remember visiting the San Fernando ranch at the time this litigation was begun. Visited it in September, October, November and December, 1891, at the instance of the Los Angeles Farming and Mill-
348 ing Company. There were lots of squatters there. Met F. M. Culp there several times. He was with the Tarbells most of the time.

(Witness refers to plat of the south 59,550.80 acres of the Rancho ex-Mission San Fernando, marked plaintiff's exhibit No. 30, and continues:)

The Tarbells were northeast of the Encino. (Witness points out the place marked in black ink, "Robert A. Tarbell.") Culp was south of them; I think, on adjoining quarter-section. They skipped around some. I found him there, and he was claiming that. I never served him. He answered without being served. At the time I met him he was

there, but he may have jumped. I am satisfied that is where he located.

I saw Joe Mazet there once, I think in September, '91. I was out there a number of times—twenty times. He was to the left of the road, before you reach the Encino. The land where Culp and the Tarbells were was all level land, and had been cultivated in wheat. The stubble was yet on it. The same as to where Mazet was. It was the prettiest part of the ranch.

I never found Shore, but I know where his place was. I had it pointed out to me where he located. I never saw him there myself. (Witness points out the place marked "John J. Shore" on the map hereinbefore indicated.) I met Rose D. Mosher there once, on the stage road. I know where her place was, too. I have been over her place. It was close to the boundary line of the ranch, in a northeasterly direction from old Escorpion ranch.

(Witness indicates the place marked "Rose D. Mosher" on map last hereinbefore referred to.)

There are some hills on that. I don't believe any of it was cultivated, but it was good pasture land. All the land east of the Encino has been under the plow—all cultivated. From the Encino to the east boundary of the ranch. All that land shown on that map, at the place marked in figures "22" (indicating) below or south of the word "sheep camp" (indicating spot on map), along the Los Angeles river, all that land has been cultivated, every bit of it, up to the mountains. There was barley stubble on that land. Vincent was located there, just after you pass the sheep ranch. He was on the road beyond the sheep ranch. He was within a mile and a half of the buildings at the sheep ranch, on the stage road, and northwesterly of the buildings, and

352 about a mile from the Encino ranch. He was east of the Encino. I had conversations with him.

Cross-examination.

Vincent was east of the Encino, right here, (showing on map hereinbefore last alluded to, place marked "Henry C. Vincent"). I could locate him on the ground if I was there. I never saw that map only now. I did not notice it yesterday. I wasn't here when it was put up. I don't know who made it. I know at whose instance it was made, but I don't know who made it. I don't know any particular quarter section. Can't go upon the land and
353 locate any of these sections. I know this much, where anybody was located. I know the neighborhood. I couldn't go upon the land and locate the quarter sections, nor could I swear positively that either of these parties were located on any given quarter section, and I don't believe anybody else could. All I can locate them on the ranch close to where they were at some given point.

I have been on the ranch three or four times before I went to serve these papers. I could swear as to where stubble was growing in a great many places, because I have been over the ranch, over and
354 over it, from one place to another, twenty-five or thirty times. But I cannot swear to any particular quarter section. I couldn't describe sections to you. I could swear there was stubble growing where every one of these people were located, because there wasn't anybody located on any place but what there was stubble growing. Where they had cabins they were set down in the stubble. I never saw the part where the stubble was burnt. I was there where it was burnt, but was never there after it was burnt. I was there in September, October, November and December, and the stubble was that fall's stubble. Most of it was wheat. Down on what they call

355 the sheep ranch was nearly all barley; they raised barley down there, mostly, instead of wheat, but that year most all of the sheep ranch was barley, and on all the other parts of the ranch I suppose they had twenty-five or thirty thousand acres all in wheat. There were six farming stations, all occupied, when I was serving these papers, by the employés of the Los Angeles Farming & Milling Company. Most of the stock was being herded on the stubble. They had bands on each ranch and they would sometimes double up the stock and one ranch would take care of some of the stock from the
356 other ranch and herd them in herds.

None of the parties served by me had enclosures. They were doing nothing to keep the stock off the stubble except putting their own stock there to prevent any other stock from coming there. I saw them drive off stock of the Farming Company. I have forgotten who it was, now. If I had the names I could tell you who they were. They were up in one of the canyons. There was nothing to obstruct the grazing of these people's stock upon the stubble. There was no fences by either party at that time. The company had at that time 120 men
357 in its employ, and six or seven hundred head of stock grazing on different parts of the ranch, at that time.

JAMES B. LANKERSHIM,

recalled by plaintiff, testified as follows;

At the time I had charge of the southern half of the San Fernando, Cyrus Lyons was acting as superintendant of the Rancho San Vicente, lying to the south. I held possession up to the line of the San Vicente.

Mr. Montgomery: I move to strike that out; it is a legal conclusion.

The court: Motion denied.

358 Mr. Montgomery: Exception.

Witness (continuing): The land immediately south of the San Fernando line is very mountainous, all the way along, continuously from this point (showing at the Cahuenga Pass) to this point (showing on Reynolds map at the Virgines). East of the Encino and up to the 12,000 acre tract sold by the company, the land is level and used for farming since 1875 by the Los Angeles Farming & Milling Company. It seems to be about 5 miles from the Encino to the 12,000 acre tract. It is about 2 miles from the south line of the Encino to the south line
359 of San Fernando, according to the Reynolds survey.

Cross-examination.

I don't think I stated yesterday that I didn't know who occupied the lands south of the San Fernando. There is an extent of land 20 miles in length, and it would be very difficult to know all the parties. I might have known some, but my recollection is that there was no such question or answer. The land was mountainous, not exactly timber land, but brush. Lyons was superintendent of that ranch, the San Vicente, just as I was superintendent of the San Fernando. I saw him two or three miles from
360 this summit, which is the dividing line. I was driving my team and he was driving his, and we stopped and talked and compared notes. That is a particular time on the ranch, but I saw Cy Lyons repeatedly at Santa Monica and Los Angeles. Now, independently of the map, I would have an idea of the distance between the Encino and the 12,000 acre tract, but as the map is there and marked off it is just as well to refer to it. My present testimony is based upon the map and my recollection of the location.

361 H. G. STEVENS.

Called on behalf of plaintiff, sworn, and testified as follows:

I am a clerk in the United States land office in this city. I have examined the records of the land office for the purpose of finding out whether any filings were tendered by any person upon any particular lands in that part of the country known as the San Fernando grant, and found several. One by Rose D. Mosher, signed by her and sworn to on the 21st day of October, 1891, accompanied by non-mineral affidavit, and the land therein described is
362 the northwest quarter of section 31, township 2 north, range 16 west, San Bernardino meridian. The Rose D. Mosher application is endorsed: "Homestead application. U. S. land office, Los Angeles, California. Rose D. Mosher. October 21st, 1891. Offered for filing and fees tendered this 21st day of October, 1891, and rejected for the reason that there are no official records of any kind or character in this office showing the land applied for to be surveyed public land. W. H. Seamans, Register. G. W. Bryant, receiver. Section 1, township 2 north, range 16 west, San Bernardino
363 meridian."

There is no record of any filing by F. M. Culp. I couldn't find any. If there was such a record it would be in the office unless an appeal had been taken by Culp, when the whole record is forwarded to the commissoner. No appeal was taken by Culp. There would be a record of it if there was.

I find application of I. B. Cox, as follows: "Homestead application. U. S. land office, Los Angeles, Cal. Isam B. Cox, October 19th, 1891. Offered for filing and fees tendered this ——— day of ———, 1891, and rejected for the reason that there are no official records of any kind or character in this

364 office, showing the land applied for to be surveyed public land. W. H. Seamans, Register. G. W. Bryant, receiver. Section 31, township 2 north, range 16 west." The document is composed of a homestead affidavit of Isam B. Cox in the usual form, for the land already mentioned. Affidavit sworn to the 19th day of October, 1891.

There was no filing tendered by Joe Mazet. There was one by John J. Shore. It is endorsed: "Homestead application. U. S. land office, Los Angeles, California. John J. Shore. October 22nd, 1891. Offered for filing and fees tendered this 22
365 day of October, 1891, and rejected for the reason that there are no official records of any kind or character in this office showing the land applied for to be surveyed public land. W. H. Seamans, Register. G. W. Bryant, receiver." The document is composed of homestead affidavit in the usual form, sworn to on the 22nd of October, 1891, and signed by Shore before the receiver, accompanied also by a non-mineral affidavit, and accompanied by the usual homestead application, and covered S. E. ¼ Sec. 22, T. 1 N., R. 15 W., S. B. M.

I find filing of Henry C. Vincent, which is en-
366 dorsed: "Homestead application. U. S. land office, Los Angeles, California. Henry C. Vincent. October 17th, 1891. Offered for filing and fees tendered the 17th day of October, 1891, and rejected for the reason that there are no official records of any kind or character in this office showing the land applied for to be surveyed public land. W. H. Seamans, Register. G. W. Bryant, receiver." The application is the same in form as those heretofore offered and embraced the northeast quarter of section 20, T. 1 north, range 15 west, S. B. M.

I find application of Robert A. Tarbell. It is: "Homestead application. U. S. land office, Los

367 Angeles, Cal. Robert A. Tarbell. September 30th, 1891. Offered for filing and fees tendered this 30th day of September, 1891, and rejected for the reason that there are no official records of any kind or character in this office showing the land applied for to be vacant public land." This is a homestead affidavit in the usual form, sworn to by Robert A. Tarbell, on the 30th day of September, 1891, before the receiver, and a non-mineral affidavit in the usual form, and the homestead application in the same form, and embraced the southeast quarter of section 22, township 1 north, range 15 west, S. B. M.

368 There was no filing by Robert J. Tarbell.

I find filing of Edwin Carter, which is: "Homestead application. U. S. land office, Los Angeles, California. Edwin Carter. October 12th, 1891. Offered for filing and fees tendered this 12th day of October, 1891, and rejected for the reason that there are no official records of any kind or character in this office showing the land applied for to be surveyed public land." Signed by the register and receiver. The homestead affidavit is in the usual form, non-mineral affidavit, usual form. Homestead application not certified to, and the land he is

369 asking to file upon is the northeast quarter of section 16, township 1 north, range 16 west, San Bernardino meridian.

(It was here stipulated that Edwin G. Carter, the defendant in this action, is the same person who tendered a filing under the name of Edwin Carter on the northeast quarter of section 16, township 1 north, range 16 west.)

I. N. VAN NUYS.

Called on behalf of plaintiff, sworn, and testified as follows:

I have resided in Los Angeles county since 1874, nearly all the time. I was here before that but

370 not continuously. I am at present president and manager of the Los Angeles Farming and Milling Company, the plaintiff in this case. Have been such six or seven years. Have been connected with this and the old corporation since 1880. I was a director in the old corporation, and I have been either director or president of this corporation since that time, and the corporation has had a board of directors ever since it was organized.

The corporation have had stock on the San Fernando, and been farming, raising stock and farming, and also carried on their mill here in Los
371 Angeles, during all this period. The flour mill was erected by the old corporation. The plaintiff has owned the flour mill since 1878. The plaintiff has been manufacturing flour and feeds ever since, doing quite an extensive business. The capacity of the mill is four hundred barrels in twenty-four hours. We haven't run the twenty-four hours all of the time. We have been part of the time twenty-four hours and part of the time twelve. Our average has been between the capacity of from twelve to twenty-four hours. Just at present we are turning out about 160 or 170 barrels in twelve hours, and
372 part of the time it has been that and part of the time it would be more, and at no time less.

I cannot tell from year to year how much land we have farmed, but various amounts, up to thirty thousand acres, probably the highest amount we ever farmed in one year would be thirty thousand acres, down to perhaps ten or fifteen thousand acres, but not often as small an amount as that. This land has been planted by us to wheat and barley for the last nine or ten years. We have put it all in ourselves. At first we had parties who were interested in the crop and who had a portion of the crop on two or three of the ranches, and then after

373 that, probably for the last eight or nine years, the company bought out the other interests and have farmed it continuously themselves. It has been farmed by the Los Angeles Farming & Milling Company and no one else interested.

We have had six headquarters or farming stations, from which farming operations were conducted. I can locate them pretty closely, I guess. Of course, out there there are no stakes in the center of the valley, but being acquainted with the map and ground I can locate them pretty closely. (Referring
374 to the sectionized map, plaintiff's exhibit 30, witness continued): In travelling the Santa Barbara road (pointing it out), from the Cahuenga Pass, we come to what is called the sheep ranch, and that is I should think, on section 23, and is about three miles east from the east line of the Encino. We have there two large stock barns and a warehouse. We have two or three houses for the use of the men, and some other smaller buildings. Some corrals around the farm and the warehouse, and there is also probably, in that neighborhood, eight hundred acres fenced. That fenced land is used for raising barley. The adobe house there has been there
375 since I have been on the ranch, that was in '71, but the other buildings were put there in '91 or '92. Prior to '91 or '92 we had smaller buildings there for the use of the stock. We hadn't cultivated any part of that ranch until about that time, because it was used entirely for stock purposes, and when we begun to cultivate it we put those buildings on. That part that was enclosed had been cultivated when the defendants entered. On all the ranch, in '91, we had upwards of 20,000 acres cultivated. All of it not cultivated east of the Encino was used for stock purposes. There was no part of it that was not used by the plaintiff for some purpose.

376 The next station we would come to would be, I think, in section 15, northwest of the sheep ranch. We had barns and warehouses and corrals, and houses for the use of our men. The men were engaged in cultivating the land. We had men there in '91 so engaged. There was not over twenty-five or thirty acres there enclosed by fences for corrals and little pastures for the loose stock. Four thousand acres were cultivated there, at the time, in all directions, north, east, south and west from that station, clear up to the Encino line and the division line between the Porter Land & Water Company
377 and the division line of the 12,000 acres sold to Garnsey and McFarland.

The next camp was located on section 6, about a mile north of the Encino line. The plaintiff had barns and warehouses and buildings for the use of the men, blacksmith shops and houses, and warehouses for machinery there. The men there were cultivating the lands and harvesting the crops. We cultivated at that camp four thousand acres, and had twenty-five or thirty acres enclosed for corrals, etc. We cultivated down to the Encino line and north to the Porter line.

378 The next station would be, I think, on section 34, township 1 north, range 16 west, probably near the east line of section 34, in the neighborhood of a half a mile from the division line between Porter and us. Had about as much cultivated there as in the other stations, between four and five thousand acres.

The fifth station, I think, is in section 11, township 1 north, range 15 west, right here, (showing the place on map), about half a mile west of the Encino ranch, and about the same amount of buildings and cultivation.

The sixth station was, I think, in section 12, about a mile east of the east line of the Escorpion. Had

379 about the same amount of buildings and cultivation there as at the other stations.

All of the land north of section 12 last referred to, owned by the company, up to the line of the Porters, except perhaps in sections 31 and 34, township 1 north, range 17 west, has been cultivated right along. In these two sections would be a few hills that could not be cultivated, but it was cultivated all the way along that line, all the land that could be cultivated. And the hills that were not cultivated were used for pasturage. All the lands north of the Escorpion, and over to the line of the Porters, was
380 cultivated, with the exception of the hills that could not be cultivated, and the hills were used for stock. And then east of the Escorpion, all that land there (indicating on map from Escorpion to Encino), and south of the Encino, right nearly up to the line, all the way along, was cultivated, until you got over near the Ventura stage road (showing same on map). North of the Escorpion, in sections 36 and 31, there were a few hundred acres cultivated. All of section 16 lying west of the Encino and immediately north of the line marked township 1 north, has been cultivated right along for I don't know how many years,
381 and was cultivated in '91. All that along there where it is marked "Henry C. Vincent" on the map —all north of the Ventura road, was enclosed with a fence and has been cultivated to barley. It was what was called the sheep ranch, and we cultivated to barley because we didn't want to get it mixed up with the wheat ranch, and I am not positive whether we had commenced cultivating on the outside of the fence then or not. I think not. I don't remember exactly. All that was not cultivated we were using for pasturage.

In '91 we had on the San Fernando over six hundred head of horses, mules, and some cattle. Years

382 before we had used the ranch for grazing, and since the new corporation was formed, we had used it for sheep, but not for the last five or six years.

Some of the land west of the Encino is not cultivated. All these five sections lying immediately north of the line marked upon the plat (exhibit 30), "T. 1 N., R. 1 W." was cultivated in '91 in wheat, with the exception that each ranch may have had a small piece of barley planted. But outside of that, it was all in wheat. We commenced cultivating this land last referred to in '76, and it has been cultivated continuously till '91.

383 I became interested in the ranch in '70 or '71; was interested in the San Fernando Farm Homestead Association. That corporation used the ranch for stock raising purposes—for sheep, mostly. At one time they had over forty thousand head there. That was in '76. In the winter of '74 and '5, the San Fernando Farm Homestead Association began to farm there, and have been farming there continuously ever since.

I have been over the land a great deal. Visited it frequently ever since '71. Have actively participated in the management of that part of the ranch
384 set aside to the San Fernando Farm Homestead Association, being the south half of it. I was a director in that corporation. Was there at the same time with Mr. Lankershim, I looking after the farming and he after the stock. Am familiar with the character of the occupancy. No other person than the San Fernando Farm Homestead Association, or the plaintiff, has held possession of any part of the ranch during that time for any length of time. I have known people to go on there a few times and get up in the canyons to cut wood. Usually when we would go to them and show them where the lines

385 were, they would get up and go off without trouble. No one has held possession against us.

I was in Los Angeles in August, '91. I didn't happen to be here at the time the squatters commenced going on the ranch in '91. I think it was in July, but I came back in August, or it might have been the last of July; but I was here shortly after they commenced going on. I went out to the ranch, and I would find some little poles, sometimes covered with burlap, and a notice stuck up that some person had a claim there. At first, I think, for a long time I could not find any one there, only just
386 these little poles that I noticed there. At first I didn't see anybody there, but later on, in September or October, they commenced to put up little shanties. Some of them built regular residences. They were a little small, and some of them were put up in all sorts of ways. I found twenty or thirty there.

At all times since 1880, the Farming and Milling Company has paid all the taxes on the land, and it has been assessed by sections. Prior to 1880, the San Fernando Farm Homestead Association paid the taxes, and the land was assessed to it.

We have always claimed under the Reynolds or
387 partition map, and have believed that that map correctly described these lands. And the corporation has not, nor has any one, at any time, expressed a doubt of our title. The plaintiff and its predecessor in interest have always maintained possession against intruders, upon the lines as shown by the Reynolds map.

(At this point the deputy recorder, Walter Marchant, was called, who brought with him book 31, page 75, of the miscellaneous records of Los Angeles county, and the map there recorded was introduced in evidence by the plaintiff, a certified copy of which

388 said map is hereinafter set out as plaintiff's exhibit 18.)

(Witness continuing:)

The map just introduced is the map which we had made after the new constitution went into effect, for assessment purposes, and is the map upon which we have paid our taxes ever since.

(In answer to Mr. Montgomery, the witness stated:) I have never compared this map with the original, but I think I know the maps well enough to state that that is a true copy of the original. I am not guessing about it. I am pretty sure that it is a
389 copy.

Cross-examination.

The San Fernando Farm Homestead Association and the Los Angeles Farming & Milling Company are not entirely the same corporation, but are chiefly composed of the same individuals. There is in the present corporation about half of the members who belonged to the old corporation. I cannot state what the changes are, because I haven't a list of the stockholders with me. I could go on the ground and locate with the map every section of which I have been testifying, if I took the assessment map with
390 me. It is made according to the Reynolds survey. My estimate as to the locality of the different sections is based upon the Reynolds map. My estimate was not based upon the government survey independent of the Reynolds map. And in locating the lands we have been cultivating I do it according to the Reynolds map.

I was superintendent of the farming operations since 1873–4. Once or twice since then I think there were perhaps, some ejectment suits commenced, but only once or twice. I don't remember the case of the Los Angeles Farming & Milling Company against Noyes. I don't remember the

391 case of the Los Angeles Farming & Milling Company against John Doe, commenced in 1882. We commenced a suit against quite a number along the southwest line there, and I presume there were some John Does in there. I think there was a man by the name of Foster in that suit. I think there was half a dozen in there, but I don't remember. They went off as soon as the suit was commenced. I think in my cross-examination I said they usually went off. I didn't say that they always went off, but I think usually they went off. I don't know of any suits pending there now. I think we got judgment
392 against all of those parties. My recollection is that there was but one of them that ever answered. There was one came and got permission to stay on the ranch, his wife was sick, and he said as soon as his wife got well he would go off. That man's name was Foster. And I think we had judgment against all of them.

I don't remember a suit against J. B. Kelsey, in '83. Foster was located near the southwest corner of the Escorpion. I remember his wife was sick and that I talked with him. There were some others sued with him, that were located well along
393 the line, near the line, next to the Virgines.

I don't remember a suit against Housler, in '91. Renaldi never occupied the western half of the San Fernando grant since I have been there. Don't know of any suit commenced against him. I remember Mrs. Mountain. I think she was in the same suit with Foster. She is not on our ranch now, nor on lands we are claiming.

We never had but one Reynolds map recorded. I think the original partition map, the map that we got that Reynolds made, was recorded. I am not positive as to whether that was recorded or not, but the map that I had recorded was the map that I

394 speak about, that I had made for assessment purposes. I don't remember having any other map recorded. If another was recorded, it was done by Mr. Lankershim before me. I don't remember of ever having seen the map which you had yesterday until yesterday. I might have seen it, I don't know. But the company has one of Reynolds' original maps. It was made for the partition, and that is the map I have always gone by, and from that map I had a smaller one made with sections on it.

Re-direct.

395 The man Foster that I spoke of left. The Reynolds partition map was not sectionized, and the sectionizing had no connection with the original map. They were placed on there afterwards, for assessment purposes. We never had it made in that form until 1880, when we had it done for assessment purposes, and the sectionizing lines were simply prolongations of the government lines.

All the parties named in the suits mentioned by Mr. Montgomery left the land. They simply got up and left of their own accord, whether the suits were pressed to final judgment or not. This map
396 (one produced by the witness) is the original assessment map.

(The map was here introduced in evidence, marked plaintiff's exhibit 30, and the copy furnished for filing is in the words and figures following, to wit:

[Here insert plaintiff's exhibit 30.]

Map 9

397 R. J. TARBELL.

called on behalf of plaintiff, sworn, and testified as follows:

R. A. Tarbell is my brother. His first name is Reuben. I belong to an organization known as the San Fernando Protective Association, and remember going on these lands in '91. There was over one hundred people belonged to it, and I was one of them, and my co-defendants belong to it, some of them, anyhow. Couldn't tell you how many went onto the San Fernando in '91. Couldn't say how
398 many there was. I know I went there, but I didn't make any record of any of the rest. I saw some of them there, probably a dozen or more. My brother went with me and no one else. I didn't make any selection of land myself at that time, I was living on my brother's land, what he selected. The land he selected was a little east of the Encino ranch, pretty near the north corner. We went there together. He stayed there something like two months, and I stayed there with him, and went off with him. We left together and never went back there again. I know Mr. Shore by sight but never saw him there. I believe he is a member of the
399 association. I don't know when it was formed. I joined it in September, 1891. I don't know what it was formed for. I believe the object of the association was to enable us to go on the land in controversy and maintain a settlement. I didn't know much about it when I joined it, and don't know how many members there was. McPherson was chairman. I know Henry C. Vincent, and I think he was a member of the association. He was a little south of my brother's location, near the Encino and east of the Encino.

I know Edwin Carter and he was a member of the association. He was on section 16, west of the

400 Encino. I know J. J. Shore. Don't know Joe Mazet, nor where he was located. Know I. B. Cox by sight. Couldn't tell whether he was a member of the association or not, and don't know where he was located. Don't know Culp or Miss Mosher.

JOHN J. SHORE,

recalled for plaintiff, testified as follows:

Don't know where F. M. Culp was located. I was a member of the San Fernando Protective Association, and paid my assessments and so on. Attended the meetings three years ago, and don't know whether Cox or Culp were members or not.

401 *Cross-examination.*

The object of that association was the gaining and obtaining of a quarter section of land, 160 acres of land, for each of their members. We understood this land to be government land, and it was the purpose of the association to obtain government land. That was the way I understood it at least that the object of the association was to get land that was held under fraudulent titles claimed by other grant claimants. In other words, it was an association to prevent fraud. I knew that at the time I entered there this land was claimed by the
402 Los Angeles Farming and Milling Company, and that they were farming and pasturing it at the time. That was plain to anybody. I didn't go over the whole of it but I knew they were farming part of it, but don't know how much. I knew they were farming where I went. I knew that they were not farming all that they claimed.

R. PICO

called on behalf of plaintiff, sworn and testified as follows:

I reside in Los Angeles City. Was born and raised here, and have lived on the Rancho ex-Misson San Fernando. Resided there from '48

403 or '49 up to a year ago. Was residing there at the time the ranch was partitioned and the southern half of it set apart to the San Fernando Farm Homestead Association. I was there when Hancock made his survey in '59. I was there when Reynolds made his survey for the partition, but I didn't go with Reynolds.

I am familiar with the boundaries of the ranch as they have been claimed during the last twenty-five or thirty years by the parties in possession. I know that Mr. Lankershim and Mr. Van Nuys have been in possession of the south half of the ranch since
404 the partition, and a great deal of it has been used for farming purposes, planting wheat and barley. I am under the impression that during all of this time Mr. Lankershim and Mr. Van Nuys have been in the possession. I have been on the land several times, and my opportunities of observation were good. From '63 up to the time that the ranch was sold, I was personally in charge of it, about seven years. I was familiar with the Rancho Las Virgines. We held right up to the Virgines line.

Mr. Leonis occupied the Virgines, on the southwest of the San Fernando. I was with Hancock
405 when he made his survey. Sometimes I carried the flag and sometimes the hatchet or the shovel. At the extreme southwest corner of the San Fernando ranch Mr. Hancock adopted as a boundary line a tree—a white oak tree—right upon the bank of the Calabasas creek. E. Hadley was carrying the compass; Jack Warren and Ben Begler carried the chain. That tree is standing yet, I saw it two weeks ago. A man by the name of Ensign and the foreman of Mr. Lankershim was with me. Mr. Ensign is a surveyor. I pointed out the tree to him. It is a white oak, and the same one that was marked by Hancock. The tree has been cut a little since

406 then, but I identified it as the same tree. I had several opportunities of going along there, so that its position is fixed in my mind. There was some Frenchmen came in there on the land, and I notified them and they came to an agreement and paid rent. That was during my occupancy of the ranch, and I held them right to that line, to that corner. Doriac and Domeck were on a part of the land then, claiming that it was government land, but they made an agreement afterwards and they paid rent afterwards, and with the exception of these persons, no one disputed our possession or occupancy.

407 *Cross-examination.*

I took charge of the ranch in '63 and held it up to '70. The oak tree that I spoke of is located here (showing southwest corner of the San Fernando Rancho on Reynolds map) at station 39. It is right at the bank of the Calabasas creek. I don't know the Reynolds map and have never compared it with the Hancock map. I know the Hancock survey because I was over every foot of it. It was made in the summer of '58. I don't think it was made in December. We started in surveying with Hancock from the Porto Suelo, here (showing at the

408 Cahuenga Pass). We left the Rodeo de las Aguas that morning, and we went to the Porto Suelo, if I am not mistaken. There are not two Porto Suelos that I know of. I am talking about the Porto Suelo at Cahuenga. We started from this point here (showing ranch line at Cahuenga Pass) and followed that line, followed the ridge of the San Fernando—the ridge of the mountain—up to the little turns here (showing on map) I think, one or two, and we came to establish that corner at the bank of the Calabasas creek. By the ridge of the mountain I mean the ridge of the San Fernando mountain, the one that divides the San Fernando and the San

409 Vicente. We always held that ridge to be the line, and it was the line, and we established the line, and I have walked over it, because my father instructed me to pay particular attention to this line, and I did pay particular attention to it.

We went and established that line, or that corner. We went back to Encino and established a section there, a corner, or two monuments; back to Encino about a mile and a half or two miles, and from there we went to this bank and then went to survey the Escorpion ranch; and after we got through with that we went and followed the line clear through
410 up to the Hoja de Lata, as we used to call it, up on the mountain. I think we were about ten or twelve days surveying, about that time. We went clear round to, I think, that Hoja de Lata—a tin monument. From there we went and established a corner at the walnut trees towards the San Fernando Pass. From there we went and established a corner right on the other side of the old San Fernando road, and then we started over to Grape Vine canyon. I don't know as I can locate that here on the map, but the Grape Vine canyon is the one that comes down to Rinaldi's. I think some of them call
411 it the Paloma canyon. And from that we took a straight shoot towards the Pacoima, to this bluff of rocks (showing a point on the Pacoima, northeast side of Reynolds map). We saw that and took it to sight on. And then we followed the creek around the Tejunga and came to establish another corner at the peak of the mountain, to the north of this corner here, about half way up the mountain. We put a monument there, right in the brush, very thick brush, and we got a big pile of rocks there. This is the Porto Suelo (showing on Reynolds map at the Cahuenga Pass), and we got the pile of rocks somewhere in here (showing on the west of the

412 Porto Suelo). We commenced at the southeast corner and and ran the south line first. We set rock monuments right along, some sandstone in some places and others a kind of chocolate white rock we used to have there. We put up a pile of rocks, and then put some pits here. I don't remember how wide it was—high and wide enough to be seen. We built three or four of those on that southern line, that I remember of. They were all about like what I have described, I think these monuments were about two feet high, something like that, I don't know exactly how wide, but they were wide
413 enough and high enough to be seen. Both large and small stones were used, mixed together, and then we dug a pit on each side. I think there was three or four on that south line, I can't tell you now in what places. I don't know without going to them whether they are there now or not. I can go to the spot. I have seen them since they were built. I went there frequently. I used to go over that mountain hunting stock and riding around. I couldn't tell you when I saw them after they were built, but I saw them very frequently, sir. They were in pretty good condition, sir, just as they were
414 built, and not disturbed. I saw one of them two weeks ago, right back of the Encino ranch, I think at station 43, right on the hill, right on the ridge, right on the main ridge. I am perfectly sure that that was the same monument that I saw put there. What does it look like? It looks like a monument. It is a post and a pile of rocks. I think I helped them put the rocks there. I don't know whether they are the same ones, but I am sure it is in the same spot. It is in the main ridge that divides the San Fernando from the San Vicente. I don't know how high it is. Hancock did not take the height. I am sure he did not. They marked the tree at 39

415 with an instrument they use for marking. I think he did put letters on it. I think they put S. F. They put the San Fernando mark, I know that. I saw it done, I was standing there. They got an instrument there to mark it, for that purpose.

From that tree we followed that bank of the Calabasas creek to the second hill beyond Miguel Leonis' house, and there is a little hill there, beyond the second hill, beyond Miguel Leonis. It is here, (showing point on the Reynolds map) about a mile, or a mile and a half, perhaps two miles from that corner there (indicating station 39). By that cor-
416 ner, I speak of the corner that Hancock established, and I helped to establish it, and I am sure of that corner. I am sure that this map corresponds with that Hancock map in this respect, that that is the corner. I don't know whether the Hancock map and this map correspond. I know the Hancock map corresponds in this respect, that the section marked 39 is where the corner was established, and where I helped to establish it, and if the Hancock map should place that corner at some other point I would not say that the tree was at that point, because I know that that corner is right at the bank
417 of the Calabasas. I recognize it. I couldn't tell you whether this (the Reynolds map), represents the Hancock survey or not. The survey that I helped make was in '58 and in the summer. I think it was August, if I am not mistaken. I am sure that he started to run the line from the southeast corner, westward on the south boundary. I saw this tree at station 39 two weeks ago.

If I remember right, E. Hadley was the man on that survey that carried the compass, Ben Vergin and Jack Warren the chainmen, Ebbetson the one that used to have the flag, the flagman, and I am not sure but Frank Howard—the attorney here

418 now—I am not sure but he was along with us on that particular occasion. Ebbetson was a brother-in-law of George King, here in Los Angeles. I may have helped carry the flag, but I was more busy marking the line where we were going. I am positive that the survey was made in the summer of '58. I assisted Mr. Hancock to make several surveys that fall and winter. I don't remember of any in December, '58. I left for San Francisco to go to school in that month. Don't remember of any survey in October, '58, or September, '58. Yes, I think I was right along with Hancock up to
419 November, I think. I don't remember of any in December, '58, but if you tell me what place, I can tell you if I was there or not. I don't remember at what time I was at the Santa Ana del Chino, but I was there, or the Santa Ana, or San Antonio, but I helped at the San Antonio. I think I left Hancock in November, '58. I might have been on the San Fernando with him in December, '58. I don't know; I don't remember. I went to school in December, '58, the latter part of the month, I think.

C. A. ENSIGN,

called on behalf of plaintiff, sworn, and testified as
420 follows:

I am and have been a civil engineer and surveyor for 35 years, more or less, and have resided in Los Angeles county since '87.

I have surveyed the exterior boundary of the San Fernando ranch, throughout its entire length, with both the patent, Hancock and Reynolds' survey notes before me. This survey was made during the months of February, March and April, 1892. Prior to that time, in December, 1888, I ran the boundaries from station 37, the southwest corner of the Escorpion rancho, to station 41 of the San Fernando ranch, according to the Hancock and Reynolds' sur-

421 vey. Also in the fall of '91 I ran the boundary from station 41 to 44 of the San Fernando.

(Witness indicates the various points alluded to in his testimony on the Reynolds' map, being plaintiff's exhibit No. 29.)

That diagram and plat of the Rancho ex-Mission San Fernando (referring to the Reynolds' map) is a correct delineation of the San Fernando grant. There are some trivial variations of it, resulting perhaps by coloring the lines upon the paper. At station 39 of the ex-Mission San Fernando, as the
422 same is shown upon plaintiff's exhibit 29, I found both the surveyor's monuments or marks, and the natural monuments or natural objects that were named in the description of the patent. I found a white oak tree with the blaze marks upon it, but the lettering was obliterated by the work of worms, but the situation was evidenced by the calls of the patent.

About two weeks ago, Mr. Romulo Pico was with me at that tree, which is located at the southwestern point of the Rancho San Fernando, and is shown on this map (Exhibit 29) as "blazed white oak, S. F. 39." I was present when Mr. John E. Jackson
423 took a photograph of that tree. This is the photograph, and it is a correct representation of the tree as it stands there at this time. On the occasion that I visited this tree with Mr. Pico, when we drove to the vicinity of it he got out of the carriage and passed on a rise of ground just to the south of it, and he called to me to say that there is the old tree, and that the line ran from there in a certain direction, pointing to one of these hills over here (indicating hills in the direction of the Escorpion), and he pointed out the corner where the tree stood as the one that he had known as marked by Mr. Hancock. This photograph is a photograph of that tree.

(Photograph offered in evidence and marked plaintiff's exhibit 19).

Those particular places upon that diagram (pointing to plaintiff's exhibit 30) marked Rose D. Mosher, Cox, Carter, Tarbell, Shore and Vincent, are all within the patent boundary lines of the Rancho San Fernando. All of that country lying west of the Encino marked sections 19, 20, 21, 22, 23, 18, 17, 16, 15 and 14, are all within the boundaries of the Rancho San Fernando as patented. In fact, all of the lands lying within the black line which marked the exterior boundaries of the rancho, as shown on plaintiff's exhibit 30, are within the patent boundaries of the San Fernando.

That map (exhibit 30) is a correct map of the Reynolds' survey. In running the exterior line of the San Fernando grant, when we came to the northwest corner of the Escorpion ranch, which is station 34 of the patent boundary, we found the corner tree, which had been marked blown over. It was lying with its tap root over the pit which it made in falling, and could not have been carried there. It was a tree of considerable size, say two feet in diameter. I know the limbs, the top of the limbs, had been cut away, I think for wood, by somebody, at the time I was there the second time. The first time I visited that tree, it was without any mutilation, but it lay at the pit that it made by itself. On that tree I saw a scar suggestive of some former mark. I attacked it with an ax and cut out a piece of the bark which has a surveyor's mark upon it. This is the reverse mark. Marks had been placed upon the tree and afterwards grown over, and the mark impressed by resting upon that bark so as to give the impression here, whereas, the mark upon the body of the tree itself had been eaten away by the worms. The letters shown upon this mark are "S. F." and "S. 10."

427 (Bark offered in evidence and marked plaintiff's exhibit 20. From the nature of the exhibit, it is impossible to reproduce it in a statement or transcript, and if used in the Supreme Court it will have to be brought up under an order of the court allowing its transfer from the Superior Court.)

Cross-examination.

I believe I handled the ax myself in cutting out this mark. If I didn't, I stood by the bark and directed it to be done.

By Mr. Montgomery: Q. I will ask you how many, if there had been a number of surveys made over
428 this country across and up and down, north and south, east and west, by various surveyors, before you ever saw the place? A. I don't know what had been done. We have a record of some of the surveys, such as the township lines have been run through the grant.

Q. Who ran those township lines? A. Washington and Norris and Hancock and some others; different parties surveying.

Q. There was the U. S. coast survey had been made through there, hadn't it? A. The United States coast survey was simply a monument off on
429 the mountain for signal stations. You see, there was no surveys.

Q. And there was surveys and monuments fixed, were there not? A. There was a monument in that vicinity.

Q. Were there not more than one monument there? Weren't there a number of monuments there? A. I don't know of but one monument of the United States coast survey.

Q. You only know of one? A. I only know of one.

Q. Do you know there is but one? A. No, sir; I wouldn't say that.

430 Q. Hadn't Colonel Washington made various surveys through there? A. He was upon the United States system of land surveys, and made—he surveyed the offset base line along the rancho through Cahuenga pass, and also one or two of the ranch lines, part way.

Q. Reynolds made a survey attempting to find the original lines of the Hancock survey, made back in '70, hadn't he? A. Yes, sir.

Q. He had marked various trees "S. F.", hadn't he? A. Yes, sir—well, I don't know whether—

Q. Didn't he say so in his official report? A. I
431 don't know whether he marked all the trees he came to that we found "S. F." on, or whether he adopted marks which I presume were proven.

Q. Didn't he say in his report that he did mark a number of trees "S. F."? A. I can't, without referring to that, say positive. It may be.

Q. You had Reynolds' report, I understood you to say, you had Reynolds' notes and Hancock's notes of the survey when you made your survey? A. Yes, sir; but there would be no occasion for Mr. Reynolds to put "S. F." on—

Q. I didn't ask for occasion, but didn't he say so
432 in his report? A. I can't say.

The Court: He says he don't know.

Q. By Mr. Montgomery: You put some S. F.s yourself, didn't you? A. Not on any trees.

Q. What is that? A. I think we had no occasion to put any S. F.s on any trees, unless they were acting as witness trees.

Q. Well, didn't you put some S. F.s on yourself? A. I think not upon any corner tree.

Q. Well, any line trees? A. Well, there were no line trees marked so.

Q. Don't you say in your own report that you

433 did mark certain trees "S. F."? A. I think that we added some witness trees.

Q. S. F.? A. And I might by recalling particularly and specifically each corner recall the fact that I had marked some. I marked posts which were set along the line S. F.

Q. Didn't you mark trees "S. F." and wont you refresh your mind about that, because I think I have a copy of your report? A. Are you speaking of corner trees or some witnesses?

Q. I am speaking of both. Now, will you swear that you did not mark any trees "S. F." as corner
434 trees? A. I added some marks, some witness trees to those that were already given which undoubtedly were marked. I don't recall this moment a corner tree that we marked.

Q. Well, are you sufficiently clear, Mr. Ensign, to say that you didn't mark any corner tree "S. F."? A. I wouldn't like to say that. I would prefer to look at my field notes.

Q. And you will not say you didn't mark some corner trees "S. F."? A. No, I will not say that.

Q. And you will not say you didn't mark some line trees "S. F.," will you? A. I won't say.

435 Q. No. Now, Mr. Ensign, I understood you to say that you had before you the field notes of Reynolds and of Hancock both, when you made your survey? A. Yes, sir.

Q. Now, have you any means of refreshing your memory as to what their notes showed? A. Yes, sir.

Q. Have you the data with you? A. I have some of the data, yes, sir.

Q. I will ask you to go to the map here and answer some questions for me. A. (Witness goes to the map, being the Reynolds map, plaintiff's exhibit 29.)

436 Q. Will you point out to the jury on that map the line which you ran from station 2 to station 3 of the San Fernando ranch, as you understand it? A. Station 2 in the San Fernando ranch as surveyed by Hancock is the northwest corner also of the Rancho Providencia, which was originally a live oak tree, a lone tree in all that vicinity. At the time we were there the tree had been cut down and the stump about two feet high and say thirty-six inches in diameter, remained. We ran from that tree to the southwest corner of the Rancho Tejunga, a point which had
437 been established prior to the survey of the Rancho San Fernando and which is now marked and was then marked by a post in a mound of stones on the side of this spur of the mountain. Thence we ran along the boundary of the Rancho Tejunga as indicated in the patent notes and also in Reynolds' to station 3, which was now marked only so far as we could discover by a stone, a stone in a mound of stones, as described by Reynolds. The witness tree which both Reynolds and Hancock gave at this point we couldn't discover, but the situation at the bank of the Little Tejunga corresponded with the
438 descriptions both of the patent and Reynolds' partition surveys.

Q. What was Hancock's bearing going from station 2 to station 3 as given in his field notes? A. The bearing given would be north, 7 degrees west, I believe.

Q. By Hancock? You got a memorandum you say. Wasn't it 8——

Mr. White: I suppose you can use those notes. Nobody can remember them.

Q. By Mr. Montgomery: North, 8 degrees west. A. I should recall that Hancock's course was north, 8 degrees west, I believe, and— (examines book.)

439 Hancock's course is given north, 8 degrees west, which course, I believe Mr. Reynolds adopted in his report.

Q. What bearings did you run upon? A. We found the bearings to be——

Q. I want to know what bearing you ran.

Mr. White: I insist the witness shall be permitted to answer.

Mr. Montgomery: I want him to answer, but I want him to answer my question. Not some question framed by himself.

The Court: Go on, and don't get the witness off
440 when he is talking and let's see his answer when he gets through.

A. I have a memorandum of Hancock's course was north, 8 degrees west, 627 chains. Mr. Reynolds' course was north, 8 degrees west 622 chains.

Q. Now, what was yours? A. Our course from station 2 to the southwest corner of the Tejunga rancho, a point in this boundary was north, 7 degrees and 10 minutes west, and thence to station 3, was north, 7 degrees and 26 minutes west.

Q. How many chains did you run? A. We have a total distance of 619 chains and 15 links.

441 Q. What did Hancock have? A. 627 chains.

Q. 627? A. Yes, sir.

Q. That made a difference between you and Hancock of about how many chains? A. Well, seven chains and eighty-five links, I believe.

Q. How did you account for the difference? A. I didn't account for it.

Q. You haven't accounted for it? A. No, sir.

Q. I understood you to say your survey and Hancock's were substantially alike? A. I find a monument for station 3 and a monument for station 2 and duplicate monuments and we have measured the distance between them. Now, how the

442 entry should be made 627 in Hancock's I don't know. I suppose the difference in the chainmen or some mistake in counting.

Q. Didn't you in your report express your astonishment that you couldn't find Hancock's bearing trees at all when you were up there to that station? A. Possibly. Yes, we did look diligently for those trees.

Q. In your report don't you express your astonishment at it? A. Possibly. There were two trees——

Q. Don't you say: "It is a mystery how Reyn-
443 olds recognized the original bearing of Hancock for this corner"—that is corner 3—"from this stone, and that there should be nothing remaining for evidence, but in the absence of proof to the contrary we conclude the present location of the stone marked by Reynolds and the mound of stones must be held marked by Reynolds and that the mound of stones must be held as the true original corner at station S. F. 3 and Tejunga station one." Is that your report? A. I think it is.

Q. Well, has your astonishment ceased up to the present day as to that corner? A. Well, there are
444 two or more trees given. We would expect to find some remains of it, either stumps or trees, but in that case we could find nothing, but the situation at the bank of the creek.

Q. And you simply adopt that corner because you don't find any positive proof to the contrary? A. Not wholly so.

Q. Isn't that what you say? A. Running from this point, having assumed it to be as Reynolds has recorded it, to intersect in the range line which was established prior to the survey of this township, we find the connecting line according, agreeing to

445 it practically. That helps to conclude the matter for agreeing to Reynolds' report.

Q. Does that account for the absence of the bearing trees? A. No sir.

Q. Does that account for the great difference in measurement between you and Hancock? A. I am not accounting for the manner in which the defects in reckoning is made. I don't know how.

Q. You don't know how it is? A. No, sir.

Q. Isn't it a very remarkable difference? A. No, sir.

446 Q It is not? Then why do you express your surprise and say it is a mystery how Reynolds recognized it? A. The trouble with us was that we shouldn't find some remains of those trees, not the distance. The distance didn't disturb us at all.

Q. The distance and the absence of bearing trees; added to that fact you say there was no evidence to show that that was the corner except to show Reynolds had adopted it and it was a mystery to you how he could do it? A. I don't know as I say there was no evidences.

Q. "It was a mystery how Reynolds recognized the original bearing of Hancock for this corner
447 from this stone, and there should be nothing remaining for evidence?" A. I guess it is worded so.

Q. Well, it is a mystery yet, isn't it? A. So far as that matter is concerned I can't explain it.

Q. It is no less a mystery now than it was when you made your report? A. I can't explain it, sir.

Q. Let us see if we can find some more mysteries. Will you go to the line running from station 16 to station 17 and give us Hancock's bearing and distance and Reynolds' bearing and distance and your own? A. From 16 to 17?

Q. Yes, sir. A. (Referring to memorandum).

448 The course from 16 as noted by Mr. Hancock's survey is north, 75 degrees 30 minutes west, 194 chains. That of Reynolds north, 80 degrees 45 minutes west, 154 chains and 63 links, whereas, we found the course between monuments existing to be north, 74 degrees 35 minutes west, 149 chains and 29 links.

Q. How did you come to adopt 74 degrees and 35 minutes instead of Hancock's 75 and a half degrees? A. Because we found monuments which we joined as bonds—

Q. What monuments? A. At station 16 as described as in Hancock survey as a walnut tree
449 upon the north slope of a mountain I believe —this is it (showing): the north slope of a mountain, and Reynolds also confirms this description by repeating it. We found a walnut tree upon the northerly slope of a mountain here, and also a tree, a marked tree, bearing the letters "S. F. 17," at the northerly slope of another mountain across some rough country here. We joined these two monuments which are bounds of the rancho, and find the course by true meridian to be as we have given it, and the distance—

Q. Well, what does Hancock say about this sta-
450 tion 16—Hancock? A. I think he says a walnut tree upon the northerly slope of a mountain.

Q. But I don't want any guess work on this. Read what Hancock says, please. A. I would have to refer to his report.

Q. That is what I want you to do. A. (After referring to papers). The survey as entered in the patent here, Hancock's survey, describes for station 16 the corner at this point upon this map (showing) as a black walnut on the north slope of a high hill, a black walnut 5 inches marked "S. F. 16 on the north slope of a high hill." Do you wish the Reynolds' notation?

451 Q. Yes, sir. A. (Referring to memorandum again). He runs—Mr. Reynolds runs his course 15, close at station 16, a black walnut tree 8 inches marked "S. F. 16 on the north slope, the summit of a high mountain of Santa Susanna range." We find this situation, a high mountain with a walnut tree upon the northerly slope.

Q. What did you find on that walnut tree? A. There were no marks remaining on the tree.

Q. There were no marks upon the tree? A. No, sir.

Q. How did you come to the conclusion it was
452 the same tree Hancock had marked? A. Because of its situation.

Q. But it had no marks on it. That was another mystery, was it? A. No sir, not so far as that is concerned, because it conformed to the situation described.

Q. We will go from that now to station 16 to 17. Now give us what Hancock did and what Reynolds did and what you did. A. I have already named that.

Q. No, I don't think you have, from 16 to 17.

Mr. Graves: You said 16 to 17.

453 A. Well, from 16 to 17; this 16 is this walnut tree upon the north slope of this mountain here. Hancock runs north 75 degrees—or minutes—north, 75 degrees 30 minutes west, 194 chains to oak 20 inches, marked "S. F. 17"—and there is some words there—upon the side of the mountain.

Q. Upon the mountain, is it? A. Upon a mountain.

Q. And where did Reynolds— A. Reynolds has entered north, 80¾ degrees west, by traverses to station 18, and then retracing, he says, and he gives his results as 154 chains and 63 links to a post oak 22 inches marked "S. F. 17." We found upon

454 the mountain side a post oak with a blaze upon it and upon that blaze the letters and figures as I have named. We joined the two stations as bounds of the rancho and find the courses to be—

Q. I want to get what you did. A. I am telling you. We joined the two stations and find the true course to be north, 74 degrees 35 minute west, 149 chains and 29 links.

Q. Now, you point out on the map by your stick, if you please, where Hancock's line, or his bearing, would take you to—where would Hancock's bearing and distance take you to, and where would Rey-
455 nolds' bearing and distance take him, and where would yours take you? A. Well, Hancock's distance would carry him one-half mile, or very nearly one-half mile, beyond the point designated here. Mr. Reynolds' course and distance—course would not—

Q. Well, Hancock's would take him half a mile further than Reynold's? A. Yes, sir.

Q. In a different direction to— A. Mr. Reynolds entering the course which he has entered would bring him a little further south than the course I—

456 Q. It would bring him a great deal further south, wouldn't it? Bring him half a mile further south? A. No; oh no. The departure is about 5 degrees.

Q. Well, but the distance? A. Well, the distance is something, to be sure.

Q. Couldn't you with a chalk on this blackboard give the jury an idea of the difference between Hancock's line between station 16 and 17 and Reynolds' line and yours? Will you mark so the jury can see on the blackboard? A. I suppose I could.

Q. I would like to have you do it.

(Jury excused temporarily).

457 Mr. White: You can draw that line while we are waiting for the jury.

(Witness draws plat on blackboard.)

Q. By Mr. Montgomery: Now, about how far did Hancock's line run further than yours—well, I will say further than Reynolds', first? A. About two links short of 40 chains, which is half a mile.

Q. Half a mile? A. That is the distance, entered as the distance. He evidently run to the same tree.

Q. Evidently? How do you know he run to the same tree? How was it possible to run to the same
458 tree? A. Well, sir, we have the evidence of the next station by which we can connect back and find that that is the point that he must have closed upon.

Q. But he couldn't have closed upon that and ran half a mile further. Did you go to the end of the half a mile? A. We passed over there, sent one of our assistants to the point on the side of the mountain to take some observation at the time we first ran up there, but we didn't extend an examination because—

Q. You didn't examine there yourself at all? A. No, sir, because here was the station number
459 18, which was conclusive as to the closing point.

Q. Where was station 18? A. Station 18 was—

Q. You better show on the map, I suggest. A. Station 18 is this, as delineated upon this map at this point, (showing on map).

Q. By Mr. Montgomery: You don't pretend to say that that is Hancock's station 18, do you? A. I do.

Q. How could he have reached it if he went half a mile further? Isn't Reynolds' bearing from station 17 just the same as Hancock's? A. I don't remember now about that without referring to the notes. I believe it was the same.

460 Q. Just the same, 75 west. A. (Referring to book) yes, sir.

Q. How would it be possible that Hancock, running half a mile further than Reynolds and then turning with exactly the same bearing, could have come to the same station 18? A. The difference is in the record, and not in the fact of the survey.

Q. How can you determine that? You say you didn't go to the end of Hancock's line? A. We determined it by the marks upon the ground, the evidences upon the ground in that case where there is a difference.

461 Q. I want to get at these evidences on the ground. What are they? A. The United States coast survey number 18 is a well-established monument, a polished sandstone set in the ground below the surface of the ground, with the letters U. S. C. S. chiseled upon the top, and over it is piled a large mound of limestone rocks, and described in the United States coast survey report as situated upon this mountain.

Q. Did you go half a mile further to see whether there was another coast survey monument? A. No sir.

462 Q. You did not? A. No, sir.

Q. How could you say that Hancock's and Reynolds' refer to the same United States coast survey monument, when they must have been half a mile apart? A. I think they were not half a mile apart, but were identically the same. Because a guide board should be nailed wrong side up on there would not disturb the situation of the boundary.

Q. This you give as Reynolds' station number 17? A. Yes, sir; that is, that is a rough diagram (referring to the diagram on the board.)

Q. From there he ran with this bearing, that is 75 degrees west, 26 chains and 50 links—

463 Q. By a Juror: The United States coast survey monument there, can you point it out? A. This would be the next station here (showing).

Q. By Mr. White: Station 18 of the Hancock survey, as well as your own? A. Yes, sir.

Q. By Mr. Montgomery: Well, now, you run Hancock's bearing exactly the same, that is south, 75 degrees west, 26 chains and a half, and see where that would take you. A. Well, that—

Q. The same bearing from there as Reynolds'? A. If Hancock came to this tree—

Q. Well, here. A. There is no tree there.

464 Q. Don't you know there is a number of trees in that neighborhood? A. I know that there is no boundary there.

Q. How do you know? You didn't go there, you say? A. We know because we are estopped by the evidences of the next station—the next course.

Q. How do you know that there is no other United States survey coast station here? A. On application to the United States coast department they don't inform us of any other, but give us for the description—

Q. By Mr. White: What is the latter part of that
465 answer? A. The application to the United States coast survey department gave us the full description of this coast station here. We made application, and have the document from the director at San Francisco, who informed us—gave us a full description of this, of the situation of this coast survey station.

Mr. Montgomery: That is not evidence. That is hearsay, and we move to strike out what he says about what he was informed, and all that sort of thing, as being hearsay.

Q. You tell us where Hancock's station 18 would have been, with the bearing which he says he ran it

466 from that point. There were a number of trees in that neighborhood, were there not, and are yet? A. If he ran and ran the bearing, he would come down here on a parallel line with Reynolds', a half a mile further over, if he did so.

Q. If he did so? A. Yes, sir.

Q. Then you didn't look for a monument of the United States coast survey here, did you? (indicating.) A. No, sir.

Q. You don't know whether there was any there or not? A. Yes, sir.

Q. How do you know? A. I know by all the
467 circumstances and the conditions where it would be placed, and because we were not upon application informed as to a station—

Q. You had no information of any there. Is that what you mean? A. Well.

Q. You wouldn't undertake to swear, now, in the absence of any information on the subject, that there was no coast survey monument there? A. I believe there was none there.

Q. You didn't see the place at all? A. No, sir; we didn't examine that ground.

Q. Don't you know that all the way, according
468 to Hancock's survey, from that down as far as station 34, his courses and distances corresponds with Reynolds' courses and distances, and at station 34 Hancock's station is 40 chains away from Reynolds'? A. I don't know any such thing.

Q. You don't? A. No, sir.

Q. We will make you cognizant of it. A. Before we go that distance, we find evidences of the location of Hancock's lines.

Q. Well, we will come to that directly. As we come to the interesting part of this work, the more mystery there is. Are not all the bearings of Hancock and of Reynolds just exactly the same from

469 station 17 down to station 34? A. (After examining book.) They are.

Q. Just the same. Then station 34 would be at the same place. That is, if Hancock—that is, if this Hancock's station 17 to 18, if this was Hancock's station 18, when he got down to station 34 he would be in the same place, wouldn't he, as Reynolds, at the same spot? A. At the same spot; yes, sir.

Q. He would be at station 34? A. Yes, sir.

Q. Is he at the same spot at station 34? A. Yes, sir.

470 Q. Let's see what it says. Are you sure of that? A. I feel confident, sir.

Q. What does he say? I will let him decide it. Where does Hancock say his station 34 is? A. (After examining book.) Mr. Hancock describes station 34—

Q. Well, we will get the map again. A. (Indicating on map.) Passing along this boundary you come to station 34 at the northwest corner of the Rancho El Escorpion which he, Mr. Hancock, describes as a live oak tree 24 inches in diameter marked "S. F. 34" from which an oak tree bears south, 7 west, and 168 links at this point.

471 Q. Do you find this in Hancock's report, that is, in going from 33 to 34, "south, 12½ degrees west." See if it corresponds with your notes there, "south, 12½ degrees west, 180 chains to a stake at the intersection with the south boundary of township 2 north, range 17 west, 25 chains west of the corner of sections 3, 4, 33 and 34." You place on the map at where Hancock crossed this boundary line he speaks of, the south boundary of township 2 south, range 17 west—where does he say he crossed that line? A. It is entered that he crossed it to the west of the section corner, which would be situated about where my pointer is, a little northwest from

472 the corner of the Escorpion, which I have marked here.

Q. Now, where would be— A. That was located out here by the description alone.

Q. Exactly. Very well. That would locate it out there? A. That call or that description either would be so.

Q. Well, he said he crossed the boundary line, the south boundary line of township 2, 25 chains west of the common corner of those quarter sections. A. Yes, sir.

Q. Where is the common corner of those four
473 quarter sections? A. Here (showing.)

Q. Well, I want it so the jury can see it. A. It is marked and delineated—that is the cross line is not marked here, but it is about at this point where my pointer is here, say half an inch from this boundary line; well, it is about 15 chains from the line.

Q. 25? A. From the true line. It is a contradictory statement in the notes.

Q. Don't it correspond with his own notes right along through? A. No, sir.

Q. Don't he say it is 25 chains west of the common corner of these four quarter sections he names?
474 A. He says so.

Q. Isn't he the man to know? Didn't he make those quarter sections himself—

Mr. White: Let the witness answer the question before you ask another.

A. We find a monument station 33 and we find also his monument station 34 and joining the line, or joining these two monuments we have the line crossing not at that distance from the section corner but that distance from the quarter section corner next east.

Q. Did you assume that he didn't cross at that corner? A. No,—

475 Q. He says just 25 chains west of the common corner of those four sections. A. We assume that where a contradiction is made so distinctly as it is there from the facts upon the ground that he made a mistake—a mis-entry.

Q. What contradiction do you mean? A. He describes this monument fully, station 33.

Q. How does he describe it? A. In such a way—

Q. Tell how he describes it. A. He describes it as being a sandstone rock cropping out of the ground say ten feet long—well, I will have to refer
476 to his dimensions—a large sandstone rock 9 by 2—9 feet by 2 feet by 3 feet imbedded in earth, marked "S. F. 33" at easterly base of Santa Susanna mountains from which a live oak bears a given course and distance.

Q. Did you go half a mile further west to see whether there was any monument or any sandstone there to correspond with this description? A. No, sir; because I should have gone beyond the base of the Santa Susanna mountains.

Q. Where is the base of the Santa Susanna mountain? A. Right at that monument. I have
477 been up on the mountains beyond.

Q. Then you concede that his crossing point of the south boundary of township 2 was 25 chains west from the common corner of those four sections that he names? A. I do not concede it.

Q. You concede that he says so don't you. A. No.

Q. Didn't he say so? I say doesn't he say so? A. Well, he says that by a mis——

Q. Do you say he lies? A. Well, men make mistakes in making entries.

Q. Look here at another thing. You say you

478 crossed that same line 15 chains east of this same common corner, didn't you? A. Yes, sir.

Q. That would make about 40 chains, wouldn't it, difference between you and Hancock? A. Yes, sir; that is, the description would make about 40 chains difference.

Q. Isn't that about the same distance that there would have been up here (showing)? A. Yes, sir.

Q. Had you gone out to the end of the boundary between—the boundary line between stations 16 and 17? A. Yes, sir.

Q. Then if he ran on the same bearing as he
479 says he did wouldn't that have brought him to the point where he says he crossed the line? A. If he——

Q. Answer my question. Would not that make him cross, or would not that have brought him, if he ran on the same bearings as he says he did, would not that have brought him to the point where he says he crossed that line? A. If he ran the courses and distances from station 17—station 17—from station 16, to the point there it would have carried him beyond.

Q. No, I am speaking about 17. I say if he ran
480 the courses and distances from the end of his 17 of the boundary, that is, the boundary line from 16 station to 17—if he ran on that line on the bearing he says he did, wouldn't it have brought him just about to the point he said he crossed that line? A. If he started 40 chains west here and kept a parallel course and distance it certainly would.

Q. It would have brought him to that point? A. Yes, sir; it would.

Q. Isn't that some evidence that he did that? A. No, sir,——

Mr. White: Let the witness answer.

The Court: What were you about to say, witness?

481 A. I say that the points which are described in the field precludes such a conclusion—the monuments that are found upon this boundary tracing the boundary, and especially the monuments 33 and 34, this last line of which we have been speaking, and which crosses this township line as stated.

Q. By Mr. Montgomery: Now, you read—you talk about the monuments on that line. Ain't they nearly all stakes? Don't he refer to them as stakes? Read, first, his boundaries between stations 17 and station 34. Ain't they nearly all stakes and stakes? A. They are, back there.

482 Q. Be kind enough to read them and let the jury see what they are. A. From what point, station 17?

Q. Yes, from station 17. A. "Station 17 south, 75 degrees west, post marked S. F. 18, in rock mound, station of the coast survey. South, 38 degrees west, a stake. South, 4 degrees 45 minutes west, 62 chains and 50 links, stake. South, 77 degrees and 30 minutes west, at 14 chains spring. South, 35 degrees east, 2 chains distant."

Q. By a juror: I would like to ask the witness if he found those stakes as they are described as you
483 surveyed? A. No, sir; but we found the spring and the situation——

Q. The spring and the rock? A. Yes, sir; we found the spring in this course situated as stated, and south, 51 chains——

Q. By Mr. Montgomery: Did you go half a mile further west to see if there was a spring in the neighborhood of that other course? A. I did not, sir. (Witness continues to read.) "51 chains across a stream of water 8 links wide." We found this stream situated nearly as stated here. "60 chains, stake for a station. South, 13 degrees and 30 minutes west, 84 chains cross stream 8 links wide."

484 Q. 84 chains or 88? A. "84 chains across a stream." We found the stream such as here entered, "and continued 88 chains, stake or station." This stake we didn't find. "South, 7 degrees east, 4 chains and 50 links across a stream; 17 chains across a stream, 27 chains and stake. South, 83 degrees west, one chain and stake. South, 7 degrees east, 10.50 chains, stake. South, 24 degrees east, 2.50 chains and stake. South, 15 degrees west, 5 chains and stake. South, 5 degrees west, one chain and stake. South, 22 degrees 30 minutes west, 7 chains, stake. South, 41 degrees west, 6 chains,
485 stake. South, 38 degrees west, 272 chains to dead oak tree 18 inches in diameter, marked 'S. F. 31' at the southeast base of the Santa Susanna mountain. South, 39 degrees west, 8 chains and 30 links and stake. North, 85 degrees and 30 minutes west, 72 chains, a large sandstone rock 9 feet by 2 feet by 3 feet, imbedded in earth, marked 'S. F. 33,' at easterly base of Santa Susanna mountain, from which live oak 10 inches, bears south, 74 degrees and 30 minutes east, 4 chains and 50 links distant. South, 12 degrees and 30 minutes west, 182 chains, stake, intersection south boundary, township 2 north,
486 range 17 west."

Q. You are at 34 now? A. "At 25 chains west of the corner of sections 3, 4, 33 and 34, 203 chains live oak 24 inches marked S. F. 34, from which an oak 18 inches in diameter bears south, 7 degrees west, 168 links distant."

Q. Exactly. Now, Mr. Ensign, you didn't go you say half a mile further west to see whether some rocks corresponding with this one was to be found there or not? A. Because we had found—

Q. I didn't ask you the reason why.

Mr. White: If the court please, the witness has a right to say why he did not.

487 A. We did not.

Q. By Mr. Montgomery: Now,—and you don't know how many springs were up this—these courses and distances of Hancock as he gave them, do you? You don't know, do you? You never were over there? A. Not upon the ground that you propose to take us half a mile further west.

Q. Another question. The line you run was the same line that Reynolds had run, wasn't it? You adopted his courses and distances from that point down, didn't you, pretty much? A. Pretty much. There was one station that I did not.

488 Q. Pretty much you ran the Reynolds. If Reynolds made a mistake intentionally or otherwise, you were led into the same mistake by running that line about half a mile too far east; isn't that so? A. No, sir; because we were governed largely by the descriptive notes that were in the patent, and they are conclusive as to these monuments that I have been naming to you on the way.

Q. How do you know they are conclusive unless you were on the other line to see whether there were corresponding marks over there? A. The description of that sandstone rock and its situation

489 must be conclusive as to that.

Q. Can you account, if it were a fact, can you account for the fact of how it is that Mr. Hancock, in the first place, made such a vast error in running from station 16 to 17 that he gives it 194 chains while you give it 154, and how it is that his bearing was 75½ whilst yours was 74? A. No, I don't account for his mis-entry; I can't.

Q. You can't account for it? A. I cannot.

Q. Isn't it a fact that Hancock had made the government township lines and run out all these government township lines over there and section lines where this corners? A. Mr. Hancock ran a

490 part of the range and township lines. I think he ran this range line and this township line through here.

Q. This very line he refers to as having crossed at a given point. A. Yes, sir.

Q. Would it have been possible for Mr. Hancock who ran that line and who made those section corners—would it have been possible for him to have missed it half a mile in the place where he crossed that line, and missed his own section corners half a mile; would that have been possible? A. Mr. Hancock didn't run this line personally but it was
491 run by Mr. Hadley, the compassman—

Q. How do you know, were you there? A. The record of the field notes—

Q. Were you there? A. No, sir; no. I can't account for the error or mis-entry. I only know where the monuments are.

Q. I understand you—you concede the fact, I understand you, that if Hancock ran out to the end of the line from—as he gives it from station 16 to 17, if he made it 194 chains and then adopted the bearings that he says he did and ran the distance he says he did—that he would have crossed this
492 line where he says he did, wouldn't he? A. Yes, sir.

Q. Wouldn't he now? A. Yes sir, that is so.

Q. And can you reconcile that fact, with the assumption that instead of running the line where he said he did that he ran it half a mile further east? A. I don't know what you mean.

Q. Why, he run by certain—. A. What reconciliation do you want me to make, I don't know. We found the monuments and that was sufficient.

Q. You say they were the monuments. How do you know? A. By the descriptions and situations of them.

493 Q. But couldn't the same description of a tree, for example, apply to another tree? A. It might in some instances, but scarcely—

Mr. White: Let him finish his instances.

Q. By Mr. Montgomery: He simply says a spring. He gives that at one place as one of the points; he gives a spring. Is there only one spring in that section of the country? A. I presume not.

Q. Do you think there is only one sandstone in that section of the country? A. It is corroborative that it is found checking as was descr bed by him.

494 Q. Well, you have assumed— A. And the sandstone itself is situated so that to go half a mile further would be—would be out of place for the description at the base of the Santa Susanna mountains.

Q. It would be out of place of the description you wanted? A. No, sir. Of the course as it is; not as I want it. I wanted it just where it is.

Q. Wouldn't it have been exactly in place, according to Mr. Hancock's notes, if you had found a stone half a mile further west? Wouldn't it have been exactly in accordance with Hancock's notes? A. I consider that the description of the sandstone

495 by its dimensions and situation is paramount to any description of courses and distances given there.

Q. You consider that is paramount to the location of these quarter sections, this common corner of the four quarter sections he names? A. Yes, sir; it is paramount to his indication of the the point where he crossed this township line, because here is a second monument found upon the ground.

Q. What would you say—

Q. By the Court: Could you reach the monument stated on the ground if you had crossed that section monument instead of the half section mon-

496 ument? A. Not by one course—not by one line. It would have been far out of the way.

Q. By Mr. Montgomery: (Referring to blackboard.) About how far south would Reynolds' corner 17 be from Hancock's corner—you got the bearings when you were surveying easily—how far south would Reynolds' station 17 be? let's see? We are going north all the time—how much south would that corner be from this? (showing on map). A. I am not able to tell.

Q. Well, you have got the bearings? A. I have no tables with me explanatory.

497 Q. Wouldn't it be in the neighborhood of half a mile? A. Oh, no.

Q. About how many chains? A. Well, I can only make a kind of a rough estimate. It might have been ten or twelve chains.

Q. Wouldn't it be 24 chains? A. Do you mean to take the altitude of this point at this distance and this point at this distance? (indicating on blackboard).

Q. Yes. I don't mean how far south is that point from this line. I mean how far south is this point, Reynolds' station 17, from Hancock's station

498 17 up there, because he was going north all the time, and he was going west, you see. A. It might possibly be that much. I have nothing here to verify it.

Q. Well, assuming that it would have been 24 chains—I think you will find that on calculation—I would like to have you calculate that—assuming that Reynolds' station 17 would be 24 chains south of Hancock's station 17, then running with the same bearings and the same distances until crossing this township line here, he would have not—he wouldn't have travelled so far by 24 chains as Hancock would in going to that point, would he? That is, assuming

499 that Hancock went out from station 17, as he notes it in his field notes? A. Assuming the proposition that you have named, he would scarcely have crossed the township line.

Q. By the Court: Which one? A. At this point, because he would have been so much further north. The township line as he gives it is 21 chains north of the station 34; therefore, he was in latitude 24 chains north at his starting point. He would not have reached the township line quite.

Q. Who is that—Hancock? A. Hancock would not; no, sir.

500 Q. By Mr. Montgomery: Well, he did reach it, and his courses and distances would bring him to that township line, taking his figures as correct, wouldn't they? A. Well, on the assumption which you have just given me.

Q. No, he wouldn't have reached it at the same distance your men reached it. But supposing he did reach it at that distance, then Reynolds' survey would have crossed that line about 24 chains before you would get your distances that you give. Wouldn't that be so? A. Yes, sir; taking it upon the other side of the comparison carrying it beyond.

501 Q. When Hancock notes his corner as station 34, what does he say then? A. He says it is a live oak.

Q. And you say you have got a white oak? A. Yes, sir.

Q. So it is not only the tree that the contradiction is in, but it is Reynolds' entire line from station 17 down to station 34 that is in utter conflict and irreconcilable with the Reynolds survey, is it not? A. No, sir. Of course there is some contradictory entries, but it is not irreconcilable with the survey of Mr. Reynolds which is in some particulars explanatory of some facts which are stated by Mr. Hancock.

502 Thursday morning, April 4th, 1895.

(Cross-examination continued).

By Mr. Montgomery: Q. Mr. Ensign, yesterday we were on the question of the line running from station 17 to station 34 and we tried to examine whether the Hancock line could be reconciled with the Ensign line. I understood you to say that there were no monuments found on that line except a spring and a rock referred to by Hancock in his notes as you und erstood the line? A. I don't think I stated that.

Q. I may have misunderstood you, but are there
503 any others? A. There is the coast survey station which is a clearly defined station with the original stone planted by the coast survey—

Q. I stand corrected in that respect. A.—and a mound of rocks above it which was referred to in the original notes.

Q. In Hancock's notes? A. In Hancock's notes; and there is evidences of the situation of the dead tree. I don't know that I referred to that. The dead tree, however, has been removed, but the evidences—there is evidences of its situation at the end of the course number 30 I believe.

504 Q. Well, I will just—these notes of Hancock's are short and the same are incorporated in the patent, I believe, and I will just read them and we will see what stations there are. I will say to station 17. "Thence south, 75 degrees west, 26.50 chains to a post marked S. F. 18 in rock mound, station, a station of the coast survey." That is the one you had reference to? A. That is the one I referred to first.

Q. Next after station 18, "thence south, 38 degrees west, 15 chains to a stake, station." A. In addition to that I mention the points of the crossing of the creek at several instances named by Mr.

505 Hancock in his notes which are important not as precise points but as limiting the distances and situation.

Q. Well, ~~we~~ he don't refer to any creeks in here now. "Thence south, 38 degrees west, 15 chains to a stake, station. Thence south, 4¾ degrees west, 65.50 to a stake, station. Thence south, 77½ degrees west, at 14 chains a spring of water bears south, 35 degrees east, distant 200 links. At 51 chains crosses a stream of water 8 links wide. Course south, 12½ degrees west, is a stream runs through the canyon about 30 links wide, 60 chains to a
506 stake." A. That we identified.

Q. Do you remember making reference to that in your report, to that spring? A. Yes, sir; I think I did.

Q. I will ask you if you remember making—well, I had better read it. Referring to that spring, do you remember making this statement. "Said spring is noted by Hancock in patent survey as bearing south, 55 degrees east, 2.50 chains distant from point in boundary 14 chains from station 20, and our location agrees with his. This spring having several issues is not a point of precision." A.
507 Yes, that is correct. The spring occupies a space perhaps like this enclosure here, one-half of this enclosure, in two or three issues. It wouldn't be like a post corner.

Q. Then you didn't place much reliance upon that spring at that time? A. Yes, sir; I did.

Q. What made you say that, then? A. Because it would not establish by measurement or as a witness precisely the distance down or back to the corner which we were—

Q. Any monument there in connection with the spring? A. —at which place I believe we found a stake in a monument of stones, but not situated

508 quite as the course and distance called for, and we couldn't make use of the spring as a matter of check.

Q. You could not? A. No, sir.

Q. And you don't know who put that mound of stones—a mound of stones you say? A. Yes, sir.

Q. You don't know who put that there? A. I don't, and the marks upon it were not such as we could identify its origin. It was corroborated by the situation of the spring, however, in a very close approximate way.

Q. Up to that stakes, stake station, right along
509 until you got to where? A. In course 21 I believe. In course 21 I think we ran 84 chains to cross—well, in this same course we crossed the creek as you have just read, in a narrow gorge, in a little narrow gorge about 30 links wide, at a little greater distance, a few links or so, greater distance than given by Mr. Hancock. Then in course 21 which he gives the south 13 degrees and 30 minutes west, 84 chains cross stream 8 links wide, we found this point upon taking our course from a point at 9 chains distant from the crossing of the stream in the little gorge as given in these notes, namely, the dif-
510 ference between 51 chains and 60 chains to the stake, which is 9 chains, running thence 9 chains and turning for a corner we find this stream at the distance stated in these notes, or so approximately near as to be acceptable.

Q. No monument mentioned there? A. No, sir, no monument except the stream itself.

Q. Well, that stream didn't stop there nor begin there, did it? A. No, sir, it is forever going—

Q. You placed your principal reliance upon the stream first named and the rock as controlling points, yesterday, in your testimony? A. Have you reference to the station 33?

511 Q. Yes, station 33. A. Well I mention those—

Q. I am speaking of a point—wait a moment until I make myself understood—I am speaking of the points between stations 17 and 34, and I understood you to say that running upon the Hancock bearing and distance would carry his line about half a mile west of the Reynolds line—following Hancock's courses and distances from the end of station 17? A. Yes, I admitted that upon the assumption of the course and actual distance as given by Mr. Hancock he would run half a mile further west.

Q. He would run right along about half a mile
512 west? A. Yes, sir.

Q. And I was asking you what were the points that controlled you in ignoring entirely his courses and distances to such a great extent as to discard entirely his 17 courses and 17 stations named and running half a mile further east? A. I don't discard them. I correct his 17th course, and thence I commence and work upon his line.

Q. But you discard them and refuse to be governed by them, don't you? You didn't follow them at all, did you? A. Yes, sir.

Q. What? A. Correcting his distance in the
513 17th course, I followed his courses.

Q. But his course from his point, you didn't follow his course from his points, did you? A. I didn't take his distance upon that course and thence continue upon his call.

Q. You assumed that he was wrong there, didn't you? A. Yes, sir.

Q. And I wanted to know what are the proofs of it, and you said you found a spring and a rock upon this other line which you took as controlling monuments? A. These corroborate my correction, making the correction from the coast survey station, which is an indubitable monument and couldn't be

514 questioned, as referred to by Mr. Hancock, and for that matter as Mr.—as we are instructed by the courts, the station at 18, the coast survey station, is an important—is as important a point to begin a measurement from as the tree, the walnut tree at station 16, because if anything is called in question it might as well be that walnut tree. By the distance, starting from station 18, reversing the courses and the distance, we can carry the 194 chains—the question whether that tree stands, in fact the testimony as entered in this case has shown that the actual survey was from the stones toward the tree.

515 Q. I am not asking you to state conclusions here, Mr. Ensign. I want you to state the facts. A. Well, I was stating the facts.

Q. That is the very thing we are trying to prove, as to where that survey was, if there ever was one, or if there ever was one or not. A. The fact is that coast survey station stands upon the mountain as we have described.

Q. Right here I would like to ask you if the fact bears upon your interest. Have you any interest in the event of this suit? A. No, sir; not any pecuniary interest, excepting my reputation as a

516 surveyor, perhaps.

Q. Have you any contingent fee depending upon the success of this survey? A. No, sir.

Q. Didn't you so state on a former trial in this court? A. I did not wittingly. I did not nor anywhere else.

Q. I simply ask you for the information. Now, have you a contract with the Los Angeles Farming & Milling Company with reference to this survey? A. I have no contract at present.

Q. Well, did you have a contract? A. We had a contract.

517 Q. What was that contract? A. It was a contract to survey the boundaries of the entire rancho.

Q. What was the pay? A. The payment was made to Mr. Wright, Mr. Nicholson, and the whole of the party. There was a lump contract for pay for all expenses, including all expenses in the matter.

The Court: Was it contingent upon the result of this litigation? A. No, sir; it has been fully paid.

Q. By Mr. Montgomery. Still, I want to offer this witness——

518 The Court: You can find out his interest, of course.

Mr. White: Counsel has asked the witness if he didn't testify at some trial. He has not fixed the time and place. I would like to see anybody testify that he made any such statement upon the former trial as that he was dependent on any contingent fee; hence, if the counsel will fix the time and place, if he expects to produce any proof of that statement,——

Mr. Montgomery: As a matter of course, senator, I know that is the business of a lawyer if he is going to impeach a witness, he must fix time and place.

519 I need no instruction upon that at all. I learned that forty or fifty years ago.

Mr. White: But you made that assertion.

Q. By Mr. Montgomery: What was the compensation you were to get of that company for making this survey? A. The compensation was a lump compensation to all the parties. Do you mean between the other parties and myself?

Q. Were you not to have a compensation of your own? A. No, sir; it was a joint undertaking of Mr. Wright and Mr. Nicholson and myself.

Q. Were you all parties to the contract? A. Mr. Wright and I were parties.

520 Q. Was the contract a written one? A. Yes, sir.

Q. What was the consideration to be paid? A. I am not certain whether the contract was a written one, no. There might have been a memorandum made. I don't remember.

Q. What compensation were you to get for making this survey? A. The compensation was four thousand dollars to the companies.

Q. Has that been paid? A. It has been paid.

Q. Entirely? A. Yes, sir. It was paid before the former suit was begun.

521 (Discussion.)

Q. Now, Mr. Ensign, you say that fee has been paid entirely? A. Yes, sir; I think so. It was paid before the actual trial of the other suit.

Q. Now, I will ask you if you didn't testify on the trial of what is known as the Hoff case—I was not here and don't know what you swore to—but I will ask of you if you didn't testify as a witness on the trial of what is known as the Hoff case, where Hoff and others were defendants and this same party company was the plaintiff? A. I believe that was the title of the case that I was a witness on.

522 Q. Did you not state on that trial that your agreement with the company was to do the work for $1500.00 certain, and if you made it a success that youwere to get $4000.00? A. I made no statement of the sort.

Q. You did not? A. No, sir; not in any form. I made no statement of the sort. I made no statement respecting that matter that I recall.

Q. I was not here and I am not a witness in the case. I am simply acting as attorney in the matter. Now, coming back to that station 33 do you remember how Hancock describes that stone, station 33? A. Yes, sir.

523 Q. How does he describe it? A. He said it was a stone at the—a stone 9 feet by 2 feet by 3 feet imbedded in earth, marked S. F. 33, at the base of the Santa Susanna mountains, or words to that effect. I can't quote exactly perhaps, in the order of the words.

Q. By a juror: I would like to ask the witness one question right there. That statement says it is at the base of the mountain. A. Yes, sir.

Q. Well, by going half a mile west of that would it be up a mountain or would it be still at the base of the mountain? A. From the
524 station 33 at this point this stone is not a detached stone but it is really a cropping of the strata of the sand rock which forms this mountain at this place.

Q. By the Court: A rock in place? A. It is a rock in place. The mountain still descends in such a manner that the upper surface is denuded of the earth and also the face of the break or fault in this rock or strata is shown for about a height of two feet here and it is uncovered for a distance of nine feet in this manner, showing the front and the front is marked at present "S F." over the figures "33,"
525 and at a little distance I believe at the right now, I am quoting from memory, I am not certain—older marks are present, "S. 11" and "33" in some form similar to that, at some former time. It is supposed that this "S. 11" was in the direction——

Q. Don't give me any suppositions unless you know something about that. A. Now, the mountain from this point, the mountain continues rapidly up here in a series of this sand rock broken in steps as it were and ascends some seven to eight or nine hundred feet probably, almost abruptly, and the half mile would carry us away over the summit of the mountain.

526 Q. That would not be a base still half a mile away. It couldn't be described as the same. A. I am estimating now without taking any observations as to the height of the mountain, but this mountain from this point I have given here, the whole mountain range shows a faulty side abruptly towards us, the edges of the strata of sand rock as it is broken.

Q. By Mr. Montgomery: Mr. Ensign, will you be kind enough to point out on this map where station 33 is according to Reynolds' survey? A. (Showing on map.) There is 33 according to Reynolds' survey, is at this sandstone rock at the base
527 of the Santa Susanna mountain, delineated at the point marked station 33, at this angle of the two courses which are delineated as——

Q. What mountain is this over here? (showing). A. That is the Santa Susanna mountain.

Q. Wouldn't the half-mile about take you over to the base of the other mountain? A. Well, I have just stated that this sandstone rock is at the base of the mountain. The delineation of this mountain here has nothing of the topography of this sort. It is simply a delineation to show the mountain range without any definiteness as to its characteristics.
528

Q. Don't this represent different ridges of the mountain, this one and that another? (showing on map). A. No, sir; these are little hills.

Q. These are little hills, and that is a mountain over there, isn't it? A. Well, the mountain range lies there. Perhaps that is a delineation nearly of the summit. I didn't rise to the summit. I didn't climb the mountains to know how that is. As far as that is concerned, that is indefinite.

Q. By a Juror: If you would start half a mile on that line west of where you did start, would it not carry you a full half a mile still further at 33 west?

529 A. Yes, certainly, if we would start here—if we would assume the point of starting from station 17, half a mile further west, the course would have kept us parallel and the same distance to the west.

Q. The same distance? A. Yes, sir.

Q. Well, in doing that at that point where you describe there— A. I say, the same distance—there will be some points where of course, showing the lines running parallel in that manner (showing) there would be a difference made by the difference in the flagging and southing of the points.

Q. Here is what I want to find out. I want to
530 find out whether at that point it would be at the base of a mountain half a mile further west? A. No, sir.

Q. That rock, I mean? A. No, sir; not at the base of the Santa Susanna mountains, which rise—which actually begin to rise before we get to the station. That is, there is a slope still comes down from this rock.

Q. By Mr. Montgomery: Do you state that as a fact from actual measurement, or do you state that as a mere guess, that half a mile further going on west wouldn't have brought you to the base of a
531 mountain? A. We didn't measure it.

Q. I thought not. Another question I want to ask. Do you know who marked those letters and figures on this stone that you refer to? A. No, sir; I don't know personally who marked them.

Q. Don't you know that Reynolds had made a survey there about ten years before you were making this survey? A. I know Mr. Hancock says that there was "S. F. 33" marked on the rock.

Q. I understand you; but answer my question. I don't want you to argue this case. You have able counsel to do that for you. A. Very well; you

532 asked me if I knew. I know so far as the record is concerned.

Q. I simply want you to answer my questions. You needn't argue the case at all. There is no occasion for it, and you are not paid for it, and you ought not to do it.

Mr. White: If the court please, I object to the counsel lecturing the witness.

The Court: It is an objectionable way of examining the witness, Mr. Montgomery. I will give you all the rights of an attorney to examine him to the fullest extent, but the witness is under oath, and
533 there he is not on equal footing with the counsel; therefore, he is entitled to the protection of the court.

Mr. Montgomery: I will obey the suggestion of the court. I don't want to annoy the witness. I simply want to get the truth.

The Court: Don't put the question in such a way as to impute dishonesty to the witness, because he is under oath.

Mr. Montgomery: I want the witness to answer my question. When he goes out and argues the case, I certainly have a right to call him back; that
534 is all.

The Court: Answer the questions as succinctly as you can.

Q. By Mr. Montgomery: Do you know who made the marks on that rock? A. I don't know of personal knowledge; no.

Q. Don't you know that Reynolds in his report speaks repeatedly of having made just such marks as that "S. F.", and giving the number of the stake? Don't Reynolds do that in his report of his survey? A. I believe there are a few instances where he states that he made—the language of his statement

535 is such that indicates that he made the mark for want—for the reason that it was absent.

Q. He states that several times, don't he? A. Yes, sir; but in this case it was not absent.

Q. How do you know it was not? Were you there ten years before you made this survey? Tell us how you know that it was not absent when Mr. Reynolds made that survey? A. If we can rely upon the field notes, we have Mr. Reynolds' statement.

Q. Now, what does Mr. Reynolds say he did with reference to this flat rock that you are now talking
536 about, and what kind of a rock does he say it was? A. (Referring to book) Mr. Reynolds' record is that at this station 73 he raised a mound of rock.

The Court: 73? A. 33, I should say. That he raised a mound of rock on top of a large sandstone cropping out on the east face of the rock mountain marked "S. 11," set a black oak stake marked "S. F. 33." It is evident Mr. Reynolds marked a stake, but he said nothing about making any mark upon a rock, or does he mention, as he does mention, the other figures "S. 11", as I have indicated already.

Q. By Mr. Montgomery: 27 degrees east, 72
537 chains raised mound—he didn't say "I raised mound." It means "I did" of course. "Raised a mound of rock on top of large sandstone out-cropping on east face of rocky mountains of Santa Susanna marked S. F. 11. Set black oak stake marked S. F, 33 station." It don't say "I did," any of them, but evidently the "I" is understood.

Mr. Graves: He didn't set the black oak, then, did he?

Mr. Montgomery: Yes, he did.

The Court: That is a matter of argument as to what he meant.

Q. By Mr. Montgomery: Then you don't pre-

538 tend to swear that Hancock made those letters or figures, do you? A. I suppose that he made them or they were already made at the time of his survey.

Q. I asked you what you know. I don't want any suppositions now. Just answer the question. A. You asked me if I supposed, I believe,

Q. I say, do you know that Hancock made them, that is what I asked you. A. I misunderstood you then. I didn't see Mr. Hancock make them or any of his assistants, but I know from the record.

Q. That will do. A. I wish to correct, if you please. I think this mark which I made here had a
539 letter "S" before that. I omitted it. My memory is now that a letter "S" is placed there, meaning "station 33."

Q. By Mr. Montgomery: To come at a direct understanding of things, I want you to state to the jury—you have already given, Mr. Ensign, your view as to where Hancock ran after he left station 17. But now suppose that Hancock, after leaving station 17, ran just exactly where he says he does in his field notes, the courses and distances from that point that you told us was about half a mile further west than Reynolds' station 17. Suppose
540 that Hancock, from that point, ran just where he says he did, where would he strike the southern boundary of township 2 with reference to the point where the Reynolds' line struck that same boundary? A. About half a mile west.

Q. About half a mile? A. Yes, sir.

Q. Doesn't Hancock's field notes say that he did strike it there? A. Yes, sir; it says that. It says a good many things that contradict that.

Q. Just answer my question. A. Yes, sir; he says that.

Q. You are now a witness and I do like to have my questions answered without argument.

541 Mr. White: He did answer the question directly and then made an explanation which he has a right to make.

Mr. Montgomery: He has no right to go outside and make arguments. I have the witness and you can raise your objection and the court will pass upon that.

The Court: He has a right to call the attention of the court to the argument of the witness. Don't argue the case to the witness. If the witness don't answer the question properly call the attention of
542 the court to it.

Q. By Mr. Montgomery: Then if Hancock ran as he said he did you say he would strike the south boundary of township 2 about half a mile further west than where the Reynolds' survey struck that south boundary. Well, that would have taken in a large strip of land. How long would that land be—it would be half a mile wide and how long would it be, that strip? A. I haven't figured it up and don't know.

Q. It would be several miles long? A. I could compute it if I had a little time.

Q. Well, it would be several miles long, wouldn't
543 it? A. Yes, sir; it would be some distance there.

Q. By a Juror: Would it extend from 17 to the southwestern corner of the rancho down here on the mountain? A. Continuing Mr. Hancock's: yes, sir.

Q. To the Calabasas—where would it be? A. It would be a continuation of these courses and distances, would carry us down to a like distance—a similar distance to the west of these points.

Q. Near the Calabasas monument or tree? A. Yes, sir; beyond the Calabasas monument to the west all along these lines.

Q. One-half a mile? A. Yes, there is a map

544 extent in the county offices which shows the two lines as they are situated half a mile.

Q. By Mr. Montgomery: Now, another question. If Hancock didn't run upon the same line as the Reynolds' line in going from station 17 to station 34 and running as his field notes say he did run, then he would have taken in the San Fernando grant several thousand acres of land, would he not, that were not taken in by the Reynolds survey? A. It would have taken in a considerable tract of land; yes, sir.

Q. Wouldn't it be several thousand acres of
545 land? A. I presume so. I have not figured it. Several thousand I should judge.

Q. If he took in that much more land on the west than was embraced in the Reynolds survey in order to bring out the proper quantity of land would he not have had to left out on the south a great deal that the Reynolds survey took in, just as much?

Mr. White: I object to the question upon the ground that it is not a proper subject upon which to interrogate this witness, that what Hancock would have had to do is utterly immaterial. That what he
546 did do is only material and that if Hancock according to the theory of counsel took in more land than he should have taken that fact has no bearing at all upon the fact in as far as the matter of quantity is the least important element of the description. What Hancock did do is the important thing: not what he would have been compelled to do.

Mr. Montgomery: I want to make myself understood clearly—

The Court: I understand, but you assume a false fact.

Mr. Montgomery: Assume a false fact?

547 The Court: As I understand, the grant was not particularly the quantity.

Mr. Montgomery: It was quantity after it was surveyed and patented, wasn't it?

The Court: Precisely it was, but they were not limited to quantity.

Mr. Montgomery: But we certainly have a right to consider quantity after. We are trying to determine which of these surveys is right, if either.

The Court: I sustain the objection to that.

Mr. Montgomery: We note an exception.

The Court: I don't think it is cross-examination

548 either.

Mr. Montgomery: And I will state there why I want to ask the question.

The Court: Yes, I understand, but if you assume the fact that the grant was limited to quantity, that taking in more on one side might exclude some on the other—

Mr. Montgomery: Your honor don't understand me.

The Court: Yes, I do.

Mr. Montgomery: Indeed, you don't.

The Court: Let me see if I understand you.

549 You asked him, the witness, if he excluded that quantity on the west whether he wouldn't have taken in more on the south in order to arrive at the same quantity, that is substantially it.

Mr. Montgomery: No, sir, my question was— (Last question read by the reporter.)

The Court: Precisely, that is upon the supposition that the wording was limited to exact quantity, then your question might have been pertinent. I sustain the objection and you may take your exception.

Mr. Montgomery: I take my exception.

Q. Now, supposing that Hancock ran the lines

550 that he says he did according to his courses and distances if he did run to a point striking the south boundary of section 2 half a mile further west than the line of Reynolds struck that boundary, then, in order to get back to the starting point, would he not have to run upon different lines and different bearings from those of Reynolds? In other words, to make myself understood, that is what I want to get at— A. You mean to close the survey?

Q. Yes, to close the survey. A. He would have simply to force the lines.

Q. Well if he run to station 34 as station 34
551 was designated by Reynolds would not his courses and distances had to have been the same as Reynolds' to get back to the starting point and to express the same quantity of land? A. I didn't catch that quite. (Question read). Yes, if he run from 34 he would have had to have the same distances and courses.

Q. Now, were they the same? A. Well, they are in fact. They were not so entered upon the record.

The Court: Well, answer the question.

Q. Were they the same according to the field
552 notes? A. They were not according to the field notes.

Q. By Mr. Montgomery: They were not according to the field notes? A. No, sir.

Q. Well, you have the field notes of them all, haven't you? A. Yes, sir.

Q. Now, I will call your attention to the courses and distances beginning at station 38 and running to station 34—

Mr. White: Wasn't 34 the last one you were at, Mr. Montgomery?

Mr. Montgomery: Yes, that is the last one I was at, 34.

553 Q. Mr. Ensign, be kind enough to go to the map. If Hancock's station 34 was half a mile further west than Reynolds' station 34 that would throw the Rancho El Escorpion that much further west, wouldn't it? A. It would throw it further west and further north.

Q. Further west and further north? A. Yes sir.

Q. Well, Reynolds' line—but still in running the lines around the Escorpion they would have been just the same as if he had run the Reynolds' line, wouldn't it—in running around the Escorpion the
554 Escorpion is just so large and both parties in running around the Escorpion although they may have located in different places they would make the lines necessarily the same? A. The courses and distances are given the same, so that the reason I skip down to 38 was this; that in running around the Escorpion their courses and distances corresponded exactly.

The Court: Yes, but the description of topography don't; and the evidences and marks of the survey on the Escorpion line.

Q. By Mr. Montgomery: From station 38, what
555 are Hancock's bearings from station 38 to 39, and distances? A. Mr. Hancock has left his record of bearings south, 53 degrees and 30 minutes east, 92 chains

Q. What is Reynolds bearing from that same station? A. Mr. Reynolds makes a bearing of south, 36¼ degrees east, 76 chains and 70 links.

Q. Will you be kind enough to show this jury where those different bearings and courses would carry those different lines approximately? Approximately, of course. I don't expect you to do it as exactly as you did in your office. A. In chalk?

556 Q. Yes, in chalk. A. (Witness draws diagram on the blackboard).

Q. Hancock's line is 92 chains and Reynolds' 76.70? A. Perhaps that is something like it (referring to diagram on blackboard).

Q. Which is the Hancock line there? A. Hancock says 92 chains and Reynolds 76.

Q. Hancock's line there runs south, 53¼ east, and the other is south, 36¼ east. A. Well, commencing at station 38 running upon the course and distance given by Mr. Hancock, we would take something like this course (showing) and distance,
557 commencing at the same point in running on the course and distance Mr. Reynolds gives, it is delineated approximately upon this line marked R.

Q. From that point Hancock's next bearing is north, 58½ degrees east, 25 chains, about what direction approximately? A. What course now?

Q. North, 58½ degrees east, 25 chains. Reynolds' next course is 58½ degrees east, 25 chains—just the same. A. Yes, sir; this portion here is not quite enough (shows on map).

Q. Well, it wouldn't take you right back there, would it; it wouldn't take you right to Hancock's
558 corner, would it? A. It wouldn't take us to the corner, no, sir. It comes in a little west, over here (showing). Hancock's next course is north, 89 degrees east, 39 chains.

Q. By a Juror: Did you find minerals in the mountains there to draw your compass aside or affect it, iron or anything? A. There was some variations of the needle, but our method of running was not by using the needle but by a line established by the pole star, or by more precise instruments such as transits—engineer's instruments. Our courses are based wholly upon the actual azimuths, courses so derived; not by needle variation.

559 Q. The reason I asked there are mountains in Missouri you can't run the needles on hardly at all. A. I am aware—

Q. By Mr. Montgomery: Starting from the 41st station? A. South, 65 east.

Q. Give us an idea. You didn't give the Reynolds last course, did you? A. I think not.

Q. Reynolds was north, 89 degrees east, 39 chains. Now, Reynolds' course corresponding with the Hancock's last one you gave is south, 65¼ degrees east, 272 chains. A. Yes, sir.

Q. Well, you haven't drawn it long enough to
560 run it back to the corner. The result is the whole thing there has just about the same quantity of land that lies between the Reynolds survey on the south and the Hancock field notes—I don't call it a survey—as there is lies on the west between those two surveys. Isn't that so? A. I don't know. I haven't computed it.

Q. In the neighborhood of that? I don't want you to be exact; at least I don't ask you to be exact. A. There is a difference. Of course in making a plat from the two sets of field notes will show a strip of land lying between the Reynolds and Han-
561 cock survey upon the south, that is, relying upon the plat made from the field notes, there would be such an exhibit.

Q. Now, Mr. Ensign, the Reynolds survey speaks of a peak, I believe, or station 42 or '3—which is it? A. Yes, sir.

Q. Which is it? A. 42 and 43 are both peaks.

Q. How high is the peak 42 referred to by Reynolds? A. Well, I didn't enter into calculations or measurements, but I would estimate—I would say the peak might be a thousand feet above the lower portion of the valley, perhaps not quite so much at the 42 station.

562 Q. How high does Hancock say it is, the one he refers to in his field notes? A. I don't remember. In speaking of the height of such places it depends on what is referred to. If it is the distance above the immediate country it might be one thousand. If it is a distance above sea level it is another thing, and if the distance above the center of the valley it would be another thing.

Q. We are not talking about the sea level. We will say above the valley, how high above the valley? A. Well, I made a statement just now that my impression was perhaps a thousand feet above the
563 lower part of the valley where the Los Angeles river runs, some miles away; but if you mean the immediate valley about Calabasas there or in the hill country that follows there it is perhaps seven or eight hundred feet, six or seven.

Q. How much do you estimate that in your report? A. I don't remember now. It was not a matter of such character that I bear in mind.

Q. Well, now, Mr. Ensign, didn't you think it was of considerable importance, in view of the fact —isn't it a fact that Hancock referred to putting a monument on a peak five hundred feet high, and you
564 refer to putting one—a monument, or finding a monument, on a peak eight hundred feet high—didn't you think it was a matter of so small importance it was not necessary to look into it at all? A. That is a matter of very indefinite estimate in all such cases, and I didn't—the principal point observed was that he calls it a high point in the mountain, and it was a high point in the range of mountains, and as to the difference of our estimates—

Q. By a Juror: Was there any *la*titude given in any of the reports? A. They were not intended as accurate; they are approximates made by the eye.

Q. By Mr. Montgomery: That is not the ques-

565 tion the juror asked the witness. He asked you if there was any altitude given in the record, and, instead of answering that question, he goes on arguing to the jury that is not important. A. Well, I didn't understand the question. I will refer to the field notes. You speak of Mr. Hancock?

The Juror: In either of them.

Mr. Montgomery: They are given in both, and they differ 300 feet.

Q. By the Juror: Was it simply an opinion, or was it an actual altitude surveyed? Witness: A.
566 Simply an opinion made as standing upon the mountain, without any reference to instruments or any other process.

Q. By Mr. Montgomery: That was your estimate? A. Yes, sir.

Q. But do you know how Mr. Hancock made his? A. No, sir; there is no record of that.

Mr. Montgomery: I understand that the Hancock survey is in.

Mr. Graves: Yes, I have got it in; it is in. Do you want me to read it?

Mr. Montgomery: No, sir; I will read it. This survey—this is for the 43; that brings us to 43.

567 Q. Which of those stations were marked by the peak you speak of? A. 42 and 43 are both peaks. One is called in the field notes by Hancock a high peak, I believe, in the mountain, and the other is called a high peak. 43 is called a high peak.

Q. Hancock in running from 41 to 42 says: "Thence south, 65 degrees east, 272 chains to a sandstone rock 12 by 12 by 10, marked S. F. 42 station, at a high point on the mountain." It don't give the height there. That is not the one I had reference to. A. My estimate was made upon that mountain, was it not?

Q. I don't know. Was that the one you esti-

568 mated on? A. You just asked me to estimate upon that, I believe.

Q. Well, I say, is that the one you estimated on? A. I have just made from memory an estimate to you upon the question of 42.

Q. Of 42? A. Yes, sir.

Q. How high do you think that was? A. As I state, I think it might be a thousand feet from the Los Angeles river below.

Q. Here is what Hancock says with reference to station 42: "Thence north, 84 degrees east, 345 chains to an irregular mound of rock on a high peak about
569 500 feet high—about a hundred feet above the San Fernando station from which quarter section corner between sections 19 and 24, township one north, range 15 and 16 west, bear north, 28 degrees west, 111 chains distant." Now, Reynolds' report fixes or describes that peak thus: "Thence north, 87½ degrees east, over rugged mountain 327 chains and 97 links to an irregular mound of rocks on a very high peak about 800 feet above the San Fernando valley. Found large sandstone rock 24 by 16 by 8 inch marked with letters S. S.; marked same S. F." That is, Reynolds marked it S. F.

570 Mr. Graves: No; that is marked S. F. Here is the original: "Found large sandstone rock 24 by 16 by 8 inches, marked with letters S. F." You said S. S.

Mr. Montgomery: Well, I didn't intend to. I stand corrected.

Q. "Found large sandstone rock 24 by 16 by 8 inches marked with letters S. F.; marked same S. F. 43 station, and made irregular rock mound." "The corner at sections 19, 24, 25 and 30, on line between 15 and 16 west, bears north, 23¾ degrees west, 107.11 chains distant. The official course here was north, 84 degrees east, 345 chains distant, but by 2 traverse

571 run by me I find the same to be as above set forth." Now, Mr. Ensign, if both Reynolds—

Mr. Graves: Mr. Montgomery, we will get that record in awfully bad shape. You read an "E" for a "W" again. The official course here was north, 84 degrees W., 345. You said E.—east.

Mr. Montgomery: I didn't intend to. I will read it again. (Above description read by reporter.) Here it is in mine.

Mr. Graves: Well, somebody made a mistake.

Mr. Montgomery: Well you are right. It was a mistake in whoever typewrote this report, I suppose.

572 That is perfectly right. We will never quarrel as long as you try to get the truth.

Mr. Graves: We never try to get anything else.

Mr. Montgomery: Sometimes it is very tempting, though.

Mr. Graves: I deny that.

Mr. Montgomery: Perhaps you are above temptation.

Q. Mr. Ensign, there are various mountains and peaks in that neighborhood, are there not? A. There are some peaks along the mountain divide, yes, sir. There are not many peaks in the neigh-

573 borhood of 43.

Q. Wouldn't it be possible for a surveyor to run a line according to Reynolds' field notes, and make them strike the same mountain as those described here? A. I suppose not. If you have different courses and different distances, you would not find the same point by starting from the same point.

Q. But running on those respective courses and distances each surveyor may have struck a mountain, may he not, and a peak? A. I believe not.

Q. Why do you think not? A. I think the surveys of the ground show that they do not so conform.

574 Q. Do you know that? A. Yes, sir. I believe that is a fact.

By the Court: Q. Were you on the ground along that line? A. Yes, sir; I have been over that ground. There at station 42, or opposite station 42, there is a rise in the spur of the mountain that might in some measure correspond to a peak upon the other survey, than upon the Hancock survey, on the basis assuming that we start back half a mile away.

Q. By the Court: How is it in 43? A. 43 there is nothing that conforms, nothing at all that con-
575 forms with the results—with the conditions called for.

Q. You couldn't mistake that? A. I couldn't mistake that.

Q. By Mr. Montgomery: Will you show us on the map here, if you can, where the Hancock line according to his field notes would run? A. I can't accurately without——

Q. Any part of it? A. Without reference to some diagram.

Q. Well, I think we will be able to establish that. There is plenty of mountains there that the
576 Hancock line may have struck and you may not know of it. Now, Mr. Ensign, didn't you find a great deal of difficulty all the way through in making this survey of yours? A. Some difficulty to get upon the right points in some places and to reach a solid conclusion where there was so much obscurity by different records and by obliteration of some of the old marks.

Q. So I will refresh your memory by calling your attention to some of those difficulties. We will take them in order. In going to *section* 3—and there are other stations that I want to call your attention to to refresh your memory in regard to

577 difficulties in going around that survey seeking for the true lines. A. Station 3 was gone into very fully yesterday, your honor.

Mr. Montgomery: I didn't finish with station 3. My attention was called off to something else before I got through at that time and I want to take it in order now, that with others.

The Court: Do you propose to go clear around again?

Mr. Montgomery: I haven't been around with this line, your honor. I have systematized my examination of this witness, and I have not inter-
578 rogated him as we went along in regard to his difficulty he found and this is his report I have in my hand.

The Court: Where is *section* 3? It is on the Providencia?

Mr. Montgomery: No, sir; it is at the northeast corner of this survey.

Mr. Horton: My recollection is, your honor, that counsel commenced with station 16 yesterday and asked him first from *section* 16 to 17.

Mr. White: Oh, no.

Mr. Montgomery: I am now dealing with his
579 report. I have not examined him on these points I expected to examine him on.

The Court: But is it necessary to examine every one, from one to 43 or 44?

Mr. Montgomery: It is simply to show this jury, if your honor please, the great difficulty that this surveyor had in getting any sort of a conclusion. It is a fact to go to the jury.

The Court: Precisely, but what is the purpose,—to show that there is a discrepancy between these surveys? You have examined them sufficiently for that, haven't you?

Mr. Montgomery: That is in part, and it is to

580 show the unreliability of this witness's testimony. That is the main point. I want to show his unreliability as a witness from difficulty that he said himself he has had in coming to any conclusion.

The Court: Well, go on. I will see. Do you want to test his experience as a surveyor?

Mr. Montgomery: Yes, sir, I do; and his judgment in this matter.

Q. Referring to this station 3, your report says—or I will ask you if it does—"the courses number 3, 4 and 5 are found to be over long to reach station 6 tied to the range line which fact would ascent to
581 Mr. Friel's deduction for his post, so also would the course for the co-boundary of ranchos Tejunga and San Fernando, but the alignment for S. F. number 3 and T. number fourteen (points in S. F. course 2) is seen to send the corner S. F. number 3 much farther to the east. It is a mystery how Reynolds recognized the original bearing of Hancock for this corner from this stone, and that there should be nothing remaining for proof, but in the absence of proof to the contrary we conclude the present location of the stone marked by Reynolds and with a mound of stones must be held as the true original
582 corner as station S. F. 3, and Tejunga station one." Now, I will pass to another. That we had under consideration a little yesterday. A. Do you wish me to make any explanation upon that?

Q. I ask you if that is part of your report. A. Yes, I presume it is. I haven't the copy in my hand now to see what the wording was. I can explain some that in the—when we started out in this survey we had a number of documents as well as the two surveys of Reynolds and—of Hancock and Reynolds. There had been a litigation concerning the boundaries of the Tejunga before on which Mr. Friel had made some surveys on which he located a

583 point by reference to this house upon the Tejunga rancho, and at the same time he checked back from this point of intersection of the San Fernando boundary in the range line in which there is well preserved the original monuments of a range line, and which becomes a point of view to which we can tie, but the distances that were found to the stone were a little overlong. Mr. Friel had set his point, however, by a reverse survey from this range line a little further west than the stone was, he not having discovered this rock mound and stone which was buried, or nearly so. The mark remained upon the
584 stone, however, "S. F.," and according to the report of Mr. Reynolds. The point made with regard to the effect was a contradictory result. If we ran the alignment from this old station 2 to 3, to this monument for the southwest corner of the Tejunga, carrying it through in one course, we would have fallen west of this stone, but as they ran by the needle courses, which vary a little, we supposed that they deflected the line this way. But Reynolds had located that stone, he says, by reference to the same tree which Mr. Hancock had noted. Therefore, we concluded upon that stone as it was found.

585 Q. Well, you state truly in your report, don't you? A. Yes, sir; as you have read it.

Q. That contains the same thing in better shape, I think. Now I will ask you this, referring to course number 4. Did you not report: "Thence in random course number 4 by Vernier's from backsights north, 82 degrees and 4 minutes west, 3.50 chains arroyo bearing south 5.59 chains, post 4 by 4 marked T. 2 N. S. 5 on E. face,—R. 14 W., S. 6 on W. face,—S. F. on S. face. Set for unaccepted United States surveys." "To redwood post 4 by 4 marked S. F. 5 on front of Mr. Ham's place to the north." A. Mand's I think.

586 Q. Mand's—you are right. "Mand's place to the north. Mr. Mand says this post was set by Deputy Ruxson"—

Mr. Graves: There ought to be a "t" in it; it is Ruxton.

A. I had the name only orally and understood it to be Ruxson.

Q. By Mr. Montgomery: "—in the series of the preceding posts named (1890) Hancock and Reynolds distance 21.50 chains." It seems that this man Ruxson marked some posts with S. F. A. Yes, sir.

587 Q. It so states in the report. Who is Ruxson anyhow? A. Mr. Ruxson is a surveyor of this city who has been engaged more or less in some government work. He had the contract at one time of this township, the unsurveyed township which lies to the north of the Tejunga rancho and partially north of this corner of this rancho, the township lying—projecting this range line through here (showing on map.)

Q. The main point I want to get at is this, that there was a suveyor by the name of Ruxson that used to run lines through there and mark them S.
588 F. just the way these other marks are? A. Well, it was necessary for him in order to close his lines to run that boundary there.

Q. It is only the fact I want to get at, Mr. Ensign. A. Yes, sir.

Q. Referring to station 7, "Containing the course number 6 in random south, 82 degrees 22 seconds west, 49.48 chains to point 12 links to left of point for station 7 for which we can discover no corner marks. We set a granite stone 21 by 12 by 7 inches chiseled S. F. 7." You were a little in doubt yesterday whether you had marked any boundary with S. F., yourself. This is one you refer to in your report

589 as having been marked by yourself, S. F. A. You were speaking of trees, if I remember right.

Q. I was speaking of boundaries of any kind. A. I understood you to speak of trees.

Q. I suppose surveyors when they are marking they don't confine themselves to trees, do they? A. I marked many a corner and monument on the boundaries.

Q. Exactly, that is the thing I want to call your attention to and call the jury's attention to. A. I misunderstood the question.

590 Q. Again, on course number 5, "thence north, 74 degrees and 15 minutes west, for true course number 5" "to point for station number 6. This corner is not marked. The post now marked for this corner is evidently of the same series attributed to Deputy Ruxton whose survey is not accepted." How did you find that out, that it was Ruxson that made that mark? A. That was only a common report among the settlers.

Q. That was it? A. Yes sir. I was perhaps otherwise aware that Mr. Ruxson had failed in the survey. It is a matter of importance, at the same time Mr. Gore who had the contract and was upon

591 the ground making a new survey of this same township.

Q. I will ask you if you remember this passage in your report: "Note: The witness taken by Hancock" for station 15 "cannot be discovered. He also says he crossed the L. A." I suppose that is the Los Angeles river,—or, no, do you know? "He also says he crossed the L. A.—" A. The stage road.

Q. "—and Fort Tejon road at 100 chains, but nowhere in this course could he reach that road in much less than 130 chains, and no road lies at 100 chains which distance on the line falls on steep *side*

592 of a rugged spur." Do you remember that? A. Yes, sir; that is true.

Q. You found a difficulty in finding any monument where Hancock had been generally, didn't you? A. In some places, sir, there were an entire absence of marks that I could recognize as Hancock's survey.

Q. Again: "What Mr. Reynolds should have did"—No, I will read farther—"That Mr. Reynolds should have varied so much in attempting to correct the original minutes seems inexplicable." Now, if Mr. Reynolds' course of procedure in mak-
593 ing that survey was so inexplicable how did you manage to follow it? A. We took his courses and distances and the descriptive notes of the location and searched upon the ground such description as applies to the natural surface of the country and the situation. Are you referring to station 15?

Q. I believe it is. A. Mr. Reynolds states and gives his, what we call a traverse survey; he didn't follow the line.

Q. That is the identification of station 16 and 17 that this refers to? A. He followed around the ridge, followed some hills, followed the road adjoin-
594 ing a zig-zag course, as you would say, and made a deduction that the course from such a monument or such a corner to such a corner would be such a course and such a distance. He was, however, faulty in some of his deductions in such lines and courses or distances obtained. You say, speaking of the correction which he attempted to make, of Mr. Hancock's courses and distances—

Q. But you say it is inexplicable. Are you trying to explain the inexplicable, Mr. Ensign? A. Well, with reference to the fact that there were two monuments that were undoubted monuments of the rancho points.

595 Q. You say that there were two that were undoubted? A. The courses and distances which he obtained as the result was somewhat—

Q. Inexplicable? A. Unexplainable; showing that he undertook to correct his predecessor in the survey.

Q. By a Juror: I want to ask a question. In starting from the point 18, or 16, or 17, whatever it is, that half a mile west, wouldn't Mr. Reynolds or Mr. Hancock, either one, have to go back to that point where the line is, where you speak of, to have come out to this monument at the Calabasas on the
596 same running lines and minutes and degrees and chains; would he have had to come back that half mile there to have got to this corner that is established by Pico, or this other witness that swore that he knew that that was the place on the Calabasas? A. Yes, sir.

Q. He would have to drop back there to have got out; he couldn't have continued half a mile west on his running— A. No, sir; and closed upon that station; no, sir.

Q. By Mr. Montgomery: I will call your attention to that station in your report. "Hancock and
597 Reynolds gives south, 75 degrees west, 26.50 chains. The error in both of them in this course we cannot account for "—That is an error in both of them. "—for as the line is not very rough but there is some timber and a hill between stations." Now, you can't account for the course of either Hancock or Reynolds, as I understand you, in running that line from— A. From the tree S. F. 17 to the coast survey station there seems to be a great discrepancy in the course—

Q. I didn't ask you to account for it. I simply want to know if that is part of your report. A. Yes, sir; I think it is.

598 Q. Then I will not ask you to account for the unaccountable. A. We haven't attempted to cover up anything in the matter. We took the facts as we found them upon the field.

Q. Just answer my questions and that will be sufficient and not argue the case now.

The Court: Do you want anything further with this witness?

Mr. Montgomery: Yes, sir. I am not through with this witness yet by considerable.

The Court: Proceed.

Q. By Mr. Montgomery: "Note: By what pro-
599 ceeding Mr. Reynolds found the distance on course 20 to the creek to be only 47 chains is not easy to guess, especially as he was checked against this number by the original survey 51 chains." Is that a part of your report? A. I think probably.

Q. "We don't see how Mr. Reynolds could break away from all of the calls." Well, I will pass that by. Now, course 23. "Thence south, 82 degrees and 55 minutes west, on true course 23 crossing Mormon creek" to sandstone rock chisel marked S. F. 24 at the top of a narrow, high ridge spur of mountain on west side of canyon, from which a
600 stone also chisel marked S. F. 23 on same ridge bears south, 65 degrees east"—or 65 degrees distant —"96 links." "This 23 we reject as not the proper course." It had S. F. on it, didn't it? How come you to reject it? A. It was not right.

Q. It was marked the same as those you did accept as right, wasn't it? A. Possibly. I believe neither Reynolds nor Hancock set stones, by their own record. They were stakes as we read yesterday.

Q. "Large white oak tree 36 inches diameter, given by Reynolds at 112.79 chains. Our distance from Jackson's station 30 (plus 2.20 chains)"—and the 20 links gives us 113 chains, Reynolds 30—

601 "from which an adobe building bears north, 35 degrees west, 1.08 chains. We have difficulty in reconciling this as a line tree in course as made by Reynolds. His station 30 is 96 links east of our back sight which is equal to difference of 29 minutes, making the course north, 38 degrees and 24 minutes east," from this tree to Reynolds' station 30. "Station 31 by this course would be located 1.35 chains westerly of the post we are constrained to adopt for station 31 by its relation to the station 33 beyond," and evidenced in Jackson's survey. You found it very difficult to adopt that line
602 and that post, didn't you? You say you were constrained to do it. A. No, that was in adopting the post. The difficulty was in making that—in fact the tree didn't stand in a line between the two stations. The difficulty was in the fact that he called that a line tree, whereas it was not in the line—in the true line.

Q. At "foot of hill near point of spur" "set redwood post 3 by 3 square marked S. F. on east and E. E. on west faces, at top of ridge, bearing N. E. in bed rock and in mound of stones,—descend to cove in hills" "to point for station 36 S. F. We
603 reject the post standing north, 75 degrees and 45 minutes east, 21 chains distant, as evidently not the original corner." That had the proper mark for the corner, didn't it? A. There was witness trees remaining there which located the position, the exact position of the original corner. By the witness tree we selected the point for rebuilding that corner. It was not that far distant.

Q. When Mr. Minto surveyed the Las Virgines in 1879, he found the course 38 of the Rancho ex-Mission San Fernando as joining to be south, 36½ degrees east, 76.40 chains, instead of south, 53½ degrees east, 92 chains, and such finding was ap-

604 proved at the S. G. O—" A. Surveyor general's office.

Q. ——"though the location of the rancho and the grant failed. Now we found the original record quite true except as to two particulars. First, the bearing is misstated and the tree misnamed." Everthing else is correct except the bearing is misstated and the tree misnamed. Now, if the bearing is misstated, and you didn't find a tree of the same name, why in the world did you come to the conclusion that was the tree? A. By the description in the field notes.

605 Q. But you say the bearing is part of the field notes, isn't it? A. That is a part of it, but there is other descriptions, if the court please, I can refer you to.

Q. What I want to know, and the mystery to solve is, if I can now, Mr. Ensign—tell us how, when the bearing was misstated, and the bearing that was misstated took you to a different kind of tree than the one named, how you found out that was the tree? A. Well, if you wish me to explain, I can do so. You refer to station 59, on the southwest corner—station 39 at the southwest corner of

606 this Rancho San Fernando. The descriptive notes say of Hancock in his report to the surveyor general more explicitly says, to a tree upon the east side of the mouth of a cañada known as the Cañada de los Calabasas, or squashes, coming from the southwest. This tree stands by the bank—the higher bank of this cañada, upon—and is situated with reference to looking into the cañada to the southwest and so described. It is not, however, a live oak tree, but white oak or a post oak or some species that I am not familiar with particularly, upon which is a blaze, but the worms have eaten out the old marks. Upon the opposite side of it is another

607 blaze marked by Mr. Minto, and he ran the Las Virgines and identified this as the corner of the San Fernando in his report. Mr. Hancock says when he reaches station 37, that he ran his line from 38—as I am not using the words he gives it, but as he expressed it in his report—that the boundary from 37 to 39 is the boundary of the Las Virgines rancho, and this is upon this course—upon this line from 38 to 39 was formerly built, and when I first went there in the survey of 1888, there was standing the fence of Mr. Leonis, the successor of Mr. Dominguez, right upon this line to this tree, attached to this
608 tree as a corner of his claim as to the Las Virgines country. Now, we have further on station — or, if you please, going to station 3, a live oak described by Mr. Hancock and by Mr. Reynolds also, as station 40. If we reverse the course from that tree, station 40, we are brought to this tree by the mouth —upon the east side of the mouth of the cañada, looking from the southwest or coming from the southwest, and it verifies the position of that corner, although the course is stated to be another course further to the east, and the tree is called by some accident a live oak instead—

609 Q. By the Court: Could you find a live oak there corresponding with any location of this tree you speak of, that is on the bank of the arroyo? A. No, sir; there is no live oak. There are a number of trees there, and Mr. Reynolds called particular attention to the fact that there was a misnomer here, and that he found the tree, and he added to that also witness trees, and they were all of this same species, all the trees in that vicinity, that is in that near vicinity, seemed to be of that species. There were several trees.

Q. That is, white oak, or post oak? A. If that is white or post oak of course in the absence of the

610 figures and letters upon the tree we identified that one tree there at that point by Mr. Reynolds' witness trees which were present and marks upon them, as to the individual tree.

Q. By Mr. Montgomery: Now, you have got me into a worse predicament than I was before. I was asking for information and light. You tell me now in addition to the tree being put in the wrong place and wrongly named; notwithstanding it was in the wrong place you went and reversed your line and found it was in the right place. How is that? You say you went to the next station west and found the
611 tree in that course.

Mr. Graves: No, that is not it.

Mr. Montgomery: Let the witness testify.

Mr. Graves: I want you to let the witness say what he said.

The Court: Let the witness state.

A. I don't know as I can repeat the same words I stated. I say station 40 of the rancho survey is an undoubted—is a large live oak and undoubted point in the boundary of the San Fernando. Taking station 40 as a point from which to check the course and taking the back course or Reynolds' course from it
612 to the—in the direction and distance given by Mr. Hancock, it brings us to this tree and situation as conclusive, because of the description of it as standing upon the east side of the cañada—of the mouth of the cañada, is the language of the report. In the patent it doesn't speak of the mouth of the cañada. His own report gives it upon the east side of the mouth of the cañada. The cañada just comes out of the mountains at this point, and flattens out into the valley country beyond.

The Court: We will take a recess until two o'clock.

613 Afternoon session.

C. A. ENSIGN,

recalled, cross-examination resumed.

By Mr. Montgomery: Q. When the noon recess began we were at that tree, the bearing of which was misstated and the tree misnamed. I will pass in that connection to the other portion of the report. "Whatever we might assert against admitting a good surveyor would make such a mistake, the fact remains that such mis-entries are too frequent. More history of his proceedings might clearly dis-
614 close the easy way in which the slip occurred. Mr. Hancock in remarks indicates a number of lines ascertained by traverses of which he gives no detail, while course 38 lies over good ground for actually tracing the line and taking distance, suppose for some reason the work was abbreviated." Is that a part of your report? A. I presume so. I think so. It is not the whole of it, however.

Q. No, you can have the whole of it if counsel want it. I am only taking up those portions of the report I think are relevant. Is this part of your report: "We observed that the actual course of Minto is the complement of the former record. We
615 notice also that those lines which were indicated to have been formed by traverses and reduced on this survey by Mr. Hancock or his compassmentor, his office man, was not a success, besides there is evidences of fudging in the office." What does that mean, Mr. Ensign? A. That is a word surveyors use when notes are made up from calculations from some records or some plat, or scaled in, any—for instance, having made the mis-entry of 194 chains on that north boundary in order to show the place where they crossed the north township—the north boundary of township one just above the Escorpion, they would plat it out and find that it should cross

616 about that place and make the entry accordingly without actually finding it upon the ground. There are a great many references made in that way. It is not surveying, but it is——

Q. That is office surveying, is it? A. Yes, fixing up notes.

Q. About the way Benson is supposed to have made his survey? A. The word "fudging" is used in our business sometimes where there is fixed explanations and connections.

Q. "See course 16 and connection with course 33 with corners of sections 34, 33 and 3 and 4." It is
617 written here "34 and 3 and 4," I think are the corners—33 and 34 and 3, isn't it? A. I don't know.

Q. Those are the corners referred to in the Hancock field notes in locating his station 34? A. Oh, yes; the section corner of sections—the corner of sections are 3 and 4, 33 and 34, probably. I refer to that discrepancy in the field notes as an instance.

Q. "Connections of station 43 and range line and courses and distances on the south boundaries 41 and 44." A. Yes, sir.

Q. "The tree marked by Mr. Hancock for station 39 is called a live oak. This tree which shows a
618 blaze, presumably his, and another, without doubt Reynolds', and is witness by Mr. Reynolds from marked trees and pointed out by Mr. Robarts as a species of the white oak." That is a part of your report, is it? A. Yes, sir; those are the facts.

Q. Parenthetically, I wish to say that this morning I think I used the word "south boundary of section 2" when I intended to say "south boundary of township 2," and I think the witness understood me and answered me as if I had asked the question as I intended it, in locating some of these boundaries. Did you understand me to mean that? A. I think I did, sir.

619 Q. I used the word "section" inadvertently, when I intended "township 2." "Note. As there is a great variance in the calls of the respective surveys of Hancock for patent and W. P. Reynolds for partition, case number 1526, we have made measurements and locations of lines for connection with section and one-quarter corners, but after looking over the ground several days, and with all the notes we can find, we accept station 43 on a 'high peak' as called for in the patent, and this peak is the only one that could be called 'a high peak,' (except one further southwest), in this vicinity. From this station 43
620 on high peak, a small monument recently built on the mountain spur bears north, 70 degrees and 9 minutes west, distant 38.80 chains. This monument bears a stone marked S. F. 43, apparently cut some time ago, probably by Reynolds. It was said to have been found rolled down upon the side of the mountain and placed in its present seat by H. J. Stephenson in 1891, on the spot estimated by him to have been its original seat, but we deny this place as the original point, as the location is not suggested by any other fact than that of finding the marked stone at or near there, for which fact we think the
621 evidence is doubtful." Do you remember that part of your report? A. Yes, something. The word "calls" there should have been courses and distances, strictly speaking.

Q. Well, calls, I suppose would really mean about the same thing. You can correct it in that respect, if you desire to use it. A. I used it in that sense. The calls for a high peak are also recognized.

Q. "There can be no doubt but that the place now marked for S. F. 43 is that where Reynolds established his station 43, and his averments concerning the same being explicit, and made to explain the error of Hancock's notes, are entitled to consid-

622 eration, and Ensign states"—that is yourself, I suppose? A. Yes, sir.

Q. "—that on first fixing the peak in October, 1891, as being there located by Reynolds, the connection with the section corner, and so forth, he found no mound of stones, but did find the refilled pit where the mound had formerly existed, and soon discovered the stones of such a monument rolled down the west side of the peak in a gulch." Do you remember that? A. Yes, sir. This is the report of—the joint report of Mr. Wright and myself.

Q. "Assuming that Hancock intended practically
623 to follow the crest or summit of the mountain range from 42 to 44 in the Porto Suelo, or Cahuenga pass, station 43, as now located"— A. Excuse me. I thought you were calling the pass station 43.

Q. "Assuming"—I better repeat that—"assuming that Hancock intended practically to follow the crest or summit of the mountain range from 42 to 44 in to the Porto Suelo, or Cahuenga pass, station 43 as now located is the northermost peak in a range, the trend of the mountain bearing thus to the northward between said station 42 and 44. He states that these lines were not exactly run, but traverses in the plain
624 of the Encino were run instead, and he evidently blundered in computing the resulting courses and distances, and likewise in estimating, rather than running the connections of the quarter-section corners given. This blundering in noting this connection to the quarter-section corner is similar to those in writing station 17 to be about half a mile beyond westerly from its actual place, and also in entering the point of intersection of course 33 in the north boundary of the township at half a mile west of the actual point of same. One actual mistake in the field may have led to several mistakes by fudging notes." A. Yes, sir.

625 Q. "—and plats in the office to correct errors." Is that correct? A. Yes, sir; that is the result of taking one error, and trying to make other things compatible with it.

Q. Now, Mr. Ensign, with all of your researches and surveys and examinations, is it your opinion, as an expert, that Hancock ever made on the ground any survey corresponding with his field notes running from station 17 to 34? A. My opinion is he located those points—

Q. I say, on the ground where he represents them. I am not talking about the other thing. We
626 will come to that afterwards. A. If he represents by courses and distances not so—if he represents by the places and situations described clearly and ascertained exactly so.

Q. Do you understand my question? Beginning at station 17, as he represents it, you say it is about half a mile beyond Reynolds—that is, Hancock locates his station 17 about half a mile west of Reynolds' station 17. A. By courses and distances.

Q. Yes, by courses and distances. A. Yes.

Q. And then Hancock and Reynolds run upon the same courses and distances from station 16 down
627 to station 34, didn't they, corresponding exactly? A. Yes, sir; and to 37.

Q. Isn't it to 34? A. 34 and beyond.

Q. Well, in running around the Escorpion. But what I asked you is this, whether in your opinion Hancock ever made on the ground any survey that corresponds with his field notes or that comes within nearer than about half a mile of corresponding with his field notes, beginning at station 17 and running to station 34? A. I think that Mr. Hancock clearly made a survey and fixed the points.

Q. Well, that don't answer my question.

Mr. White: Well, if the court please, I suggest

628 that the same question was asked the witness before and he answered it.

The Court: That might be misleading. What do you mean by "field notes?"

Mr. Montgomery: I mean the field notes that Mr. Hancock returned with his survey.

A. Taking the whole altogether? Or simply the courses and distances?

Mr. Montgomery: I mean the courses and distances.

The Court: I suppose you arrived at that conclusion half a dozen times, or a dozen times.

629 Mr. Montgomery: I have never had a specific answer.

The Court: Oh yes, he said it would come half a mile beyond.

Mr. Montgomery: I have not asked this question before, as to whether in his opinion there was ever any survey made by Hancock on the ground.

The Court: According to his courses and distances?

Mr. Montgomery: Yes, sir; according to his courses and distances.

Mr. White: Well, put it in that way and I have
630 no objection to it.

A. No, sir. Of course the survey was not made according to the minutes.

Q. By Mr. Montgomery: Or any one of those courses from 17 to 34 is it your opinion that any survey was ever made to correspond with those courses and distances by Mr. Hancock, or any one of them? A. Assuming to start from station 17 fixed at the distance given from stations 16, no. Assuming to start from the coast survey station, or rather—

Q. I don't assume to start from that.

Mr. White: Let the witness answer the question.

631 A. It would be, yes, that he has made such a survey that is called for in the notes.

The Court: He has stated that the distance would project it beyond that government mound something like a half a mile—I understand you, Mr. witness? A. Yes, sir.

Q. The distance? A. Yes, sir.

Q. And then following the courses and distances according to Hancock would carry it along down about half a mile west. Now, I understand you have answered that a good many times. A. I have.

Mr. Montgomery: Well, if the court please, this
632 is a matter of a very great deal of importance.

The Court. Well, the reporter has it down. He has answered that.

Mr. Montgomery: But I want to know what the witness says.

The Court: Have you answered that, Mr. witness? A. I suppose I have answered it.

Mr. Montgomery: Well, I will ask the reporter to read the answer, if he has got his answer.

The Court: The reporter gets down the answer to the questions. I didn't suppose there is any doubt about that. He has answered it a dozen
633 times.

Mr. Montgomery: I think the court is a little bit over the mark.

Q. By the Court: How many times have you answered substantially like that? A. Well, it is so many times I will not enumerate it.

Mr. Montgomery: If the court please, I would prefer to leave it to the record.

(Discussion.)

The Court: Repeat the question and let him answer.

Q. By Mr. Montgomery: Is it your opinion as an expert surveyor that Hancock ever ran upon the

634 ground a line corresponding with his courses and distances, or with any one of his courses and distances, from station 17 to station 34? A. From station 17 to 34 beginning at the monument which he describes, yes, he has followed the lines exactly. If by station 17 you mean a point to be fixed 40 chains beyond, he has not run any such line.

Q. He has not? A. No, sir.

Q. Now I will ask you, Mr. Ensign, how many, if any—how many courses and distances are there in running around this so-called San Fernando grant? A. There are forty-four courses and dis-
635 tances given in the original patent.

Q. How much? A. 44. Found course number 2 a broken line, but it is still numbered in the two parts as one course. The original patent boundary is forty-four courses and distances.

Q. Forty-four? A. Yes, sir.

Q. Can you state to the jury in how many of those courses and distances do all these surveys, the three surveys, namely, the survey by Hancock and the survey by Reynolds and the survey by yourself, in how many do they all correspond, all the courses and distances out of the 44, how many? A. I
636 don't know without looking through, I don't know as there is a single one precisely to a minute.

Q. There is one, just one exactly. A. I should be obliged to pass over the notes in order to note that.

Mr. White: Well, the notes are all in evidence and they will show for themselves, I suppose.

Mr. Montgomery: Yes, sir. Well, we will not stop to have the witness examine. I state as a fact there is only one course, six chains. That is a solitary one out of the forty-four.

Q. Now Mr. Ensign, turn to Hancock's bearing and distance from station 23 to 24 and tell us what

637 it is. A. (After referring to book). South, 83 degrees west, one chain.

Q. What is Reynolds', one chain and what distance—oh yes, one chain. A. South, 83 degrees west, one chain.

Q. And what is yours? A. South, 82 degrees and 55 minutes west, six chains and 20 links.

Q. How do you account for that difference between you and both the other surveyors? It is a difference of over 500 per cent., isn't it? A. I suppose so, if you reckon in per cents. For the pur-
638 pose of enclosing the rancho for an estimate of area, having arrived at a point for station 23, we found no better lines than those marked by those stones which are not mentioned in either report, but seem to comport with Reynolds' courses and distances from number 24 I believe. Having reached this point, we joined the two points because we could find no explanation of any other course and distance excepting we joined two points which we had determined.

Q. Do those fudged figures do any worse than that? You multiplied the course and distance—the course—or, I mean the distance by 5 and
639 upwards? A. I will say that in station—we were held for course 22 by certain references to the creek which was crossed several times and recorded by Mr. Hancock. In order to keep along that creek as we did—or in keeping along that creek as we did, to conform to the original patent notes, brought us to a point that we have recorded station 22. From thence we had no descriptive notes other than the—of station monuments,—other than the courses and the marks upon the ground which we found there, which we presume had been remade monuments of the former survey of Reynolds.

Q. And that is all the explanation you can give,

640 is it? A. That is about the substance of the reasons which we had at that point. There was a line of monuments from 24 on to 23 that were built of stone, marked stones that were relatively situated as the course and distance called for nearly—

Q. By Mr. White: What is that, 24 to what? A. From 24 to station 30.

Mr. White: 30, I thought you said 23.

Mr. Montgomery. 23 is the one we are talking about.

A. Well, 30 is the one I had in mind.

641 Q. 23 is the one we are talking about. There is where you make it a little more than five times as long as either Hancock or Reynolds. A. Yes, sir; that is true. We had to close the lines there and we measured it up when we found what it was.

Q. Is that the part of the ranch you closed the line? I thought it was back to the starting point you closed your lines. A. We closed the line between—or carried the line from one point established to another point that was taken to be established.

Q. That was taken to be? A. Yes, sir.

642 Q. Somebody was wrong there and you don't know who it was, do you? A. I can't explain it all.

Q. You can't explain it? A. No, sir.

Q. Did you ever test the accuracy of Mr. Reynolds' map that you have been testifying to here? A. I never did test the plats.

Q. You never did? A. The plat, no. No, I never scaled it nor applied any instruments to see whether it was correctly delineated.

Q. Have you any instrument by which you can apply it to some of these measurements to see how near his plat is? A. No, I have no scales or pro-

643 tractors. No, I presume the plat is correct as far as that is concerned.

Q. You take that for granted, you never tried it? A. No, sir; I never tried it.

Mr. Montgomery: Has any one here measured it?

Mr. White: I don't know. I suppose if you want anything of that kind you can go outside and have it.

Mr. Montgomery: I want the jury to have it. I don't want to do it outside. We don't want to do it that way.

644 Mr. White: Then you better get your testimony and bring it into court.

The Witness: This will give the distance perhaps, but won't give the courses (referring to rule handed to wit.. by counsel).

Q. By Mr. Montgomery: No I would rather you would have the projectors. At the run, for instance, between stations 30 and 31, what are the figures? A. Stations 30 and 31? (Witness measures map.) The distance is indicated in two parts, 90 chains and 42 links plus 182 chains and 28 links, making 273 chains total for that course.

645 Q. Isn't it 272? A. 273, Mr. Hancock, to take his figures to be applicable here——

Q. This table was wrong, but it is put down here at 272 degrees. A. That is for who?

Mr. Montgomery: From 30 to 31.

Mr. Graves: From Reynolds' or Hancock's?

Mr. Montgomery: This is Hancock's.

Mr. Graves: Yes, that is correct for Hancock's, but that is not Hancock's map.

Mr. Montgomery: Well, I know, but it is Reynolds' and it is 272 for Reynolds on this table. What is yours, Mr. Graves?

646 Mr. Graves: I will find it. Do you want 30 to 31?

Mr. Montgomery: 30 to 31.

Mr. Graves: Well, I will have to add it up; he runs it in several pieces.

Q. By Mr. Montgomery: What is it at the station? A. The station point 30 is not defined on this map. The scale is so small that those connecting stations back there, short runs of one chain, are indistinctly indicated here. It is uncertain from the map just where station 30 was intended to part the line, the back line.

647 Q. Can't you locate station 30 on that? A. There is no station marked, there is not room for it.

Q. Can't you see where it is though? A. I can scale back to the point by the scale the place on the map that the scale would bring, but that wouldn't be a test of the map itself.

Q. What does it measure there? A. Apparently here it is a little overdrawn.

Q. Look at the scale at 267. A. 275. The vellum may have stretched a little.

Q. I am trying to test the accuracy of this map. A. There are about 275 chains it scales.

648 Q. Now, Mr. Ensign, will you scale another course here for me, or distance, I mean, from station 31 along the boundary line to its intersection with the range line between township 2 north, range 16, and township 2 north, range 17? A. How is that?

Q. Scale along the boundary line from station 31 to the intersection of the boundary line with the range line between township 2 north, range 16, and township 2 north, range 17 west? A. Here? (witness scales).

Q. No, on the boundary line. A It is not in good position to be very accurate. About 179 chains by this scale here.

649 Q. 179, are you sure? A. It is very close to that, 180 chains, (measures on map again.)

Q. Now, does it scale any more than 171 chains? A. Between 179 and 180 chains. I apprehend by the question just asked, there has been a misreading of the scale perhaps if it has been applied. The numbers given here are 16, 18 and even numbers are marked upon the scale, the intermediate number of 17, the odd numbers are not marked here, but the scale should be used so as to read them. It would make, interpolating the unmarked divisions here, we have 179 and fraction chains.

650 Q. Are you sure of it? A. I feel very confident, sir.

Q. And how much would that be from the number given by—— A. Placing the scale upon the stake marked in the range line in this boundary—the intersection of the line between ranges 16 and 17, between townships 2 north, and placing the scale at zero upon the stake, the point which is marked stake in mound, the station 31 is at a point on the scale between the last division before 18 which would read 180, which certifies that the distance scaled is 179 and a fraction chains, the map
651 indication by figures, or 182 and fraction chains.

Q. Will you take another measurement here for me, please? (Witness goes to the map.) What is the measurement on the map of the line crossing township one north, range 15 west, from the southeast corner of section 24? A. Township one north, range 15 west?

Q. Yes, sir. A. From the southeast corner of section 24, to the southwest corner of section 19 (measuring). The point is not delineated here on this map.

Q. Don't you find the sections I named there; you find the lines? A. I find the lines of Wash-

652 ington's offset base line beginning here, but I don't see the sections indicated very clearly, especially the southeast corner of section 24.

Q. I am not much of a surveyor, nor am I very familiar with maps, but I found it awhile ago. A. Well, section 24 is on here.

Q. There is 24. A. There is north half of 24 as delineated.

Q. I suppose this is the southeast corner, it must be, isn't it? (Indicating on map.) A. The southwest corner of 19 is—well, let me measure—

Q. You are not measuring it in the right direc-
653 tion. A. I want to ascertain whether this point is intended for a section corner or for some opposite line. This is the southwest corner of his——

Q. The question is, what does the line scale on the Reynolds' map, the line crossing township one north, range 15 west, from the southeast corner of section 24,—from the northeast corner of section 24— A. Did you say the northeast corner of section 24?

Q. No, I said the southeast corner. A. The southeast corner of section 24, you wish the scale measurement to what line?

654 Q. To the southwest corner of section 19. A. The southwest corner of section 19 and the southeast corner of 24 are identical here.

Q. They cannot be identical—A. Oh, in the same township, across the township you mean?

Q. Yes. A. (After measuring on map). It is very hard to measure this upon this wall, the map has been crinkled some. It scales 470—

Q. Why, you are going in the wrong direction, ain't you? A. I am measuring across —

Q. Let me read it again. From the southeast corner of section 24 to the southwest corner of section 19. That is not the township. I said one

655 north, range 15 west. What township are you in here (showing on map)? A. This is township one north, range 15 west, I understood you to say, the point on the range line between the two—(measuring). About 385 chains.

Q. 385? A. (After measuring again). 476 chains and a fraction.

Q. 476 chains and a fraction it scales? A. Yes, sir.

Q. Well, now, what do the figures show on the map? A. 480 chains.

Q. Isn't it 88? A. I think not.

656 Q. Where is it? A. I understand you to mean to measure from this section 24 to this, the corner of 19.

Q. Where are the figures? A. 80 chains or each mile—

Q. Usually that is so, but have you estimated these figures on this map? A. I have read them, 80, 80, 80, 80, there are six 80's, which is 480 chains.

Q. By the measurement you have 476? A. The map has been crinkled a little and that is all it seems to scale.

Q. It wouldn't make a difference of that? A. A

657 little discrepancy; it is not unusual to find a little discrepancy.

Q. It is not unusual to find that much difference between the measurement on one line?

The Court: What sections did you call, 19?

Mr. Montgomery: It was from the southeast corner of section 24 to the southwest corner of section 19 on the range line.

The Court: In different townships?

Mr. Montgomery: In the same township, township one north, range 15 west.

The Witness: It is the breadth across the town-

658 ship given by section lines as delineated, full sections.

Q. 9 would be on the west edge and 24 on the east? A. Yes, sir; the same township.

Q. 19 rather. A. Yes, sir; 19.

Mr. Montgomery: That is all.

Re-direct examination.

At station 34 the report of the Hancock survey reads as follows: "South, 84 degrees east, along the north boundary of the Rancho El Escorpion, 105 chains and 34 links to a post marked S. F. 35 and charred stake in mound, stone, from which a white
659 oak 40 inches bears south, 5 degrees and 45 minutes east, 14 chains and 55 links distant."

I ran that line. The Reynolds' calls found are as follows: "South, 84 degrees east, 105 chains 34 links, oak post in mound of stone, marked S. F. 35, and northeast corner of station El Escorpion," and he gives an additional bearing here. I ran that line. The line from station 34 to station 35 lies over hills somewhat delineated here, (showing on Reynolds' map) and for station 35 I found a mound of rocks in shape, and digging below—it is swampy meadow ground here—I found a charred stake,
660 which is mentioned by Mr. Hancock, in the bottom of the mound. It was probably eight to ten inches below the surface of the ground, well down. The mound was rounded up lightly. It was a little elevation at that particular point, and the place was also checked by Reynolds, and I found one of Mr. Reynolds' witness trees still left.

In running that line I noticed the house formerly known as Mr. Leonis' and now occupied by Mr. Hart. The marked posts were absent when I was there, but I found the charred posts at the places designated. From station 35 to 36 the Hancock call is, "thence south, 6 degrees west, along bound-

661 ary El Escorpion 105.24 chains to a post marked S. F. 36 in mound, oak 24 inches, south, 25 degrees 30 minutes west, 9 chains and 60 links distant, oak 15 inches diameter, south, 31 degrees west, ten chains distant."

Mr. Reynolds states: "South, 6 degrees west, redwood post marked S. F. 36, station 2, southeast corner El Escorpion." That station 2 means the southeast corner of El Escorpion. "White oak 27 inches on the west slope of hill south, 35½ degrees west, 9.66, 9 chains 66 links distant, a white oak 17 inches;
662 south, 31 degrees west, 9 chains and 43 links, white oak 15 inches; north, 17 degrees east, 10.53 chains west end of cabin on ridge of low hill on the west; north, ¾ of a degree west." The first witness which Mr. Reynolds notes evidently is a re-entry of the Hancock witnesses.

Our survey was ran south, 5 degrees 53 minutes west, 105 chains and 79 links. There was a post standing, or on the ground. We found the first witness that both Hancock and Reynolds gave, a white oak, south, 35½ degrees west. Mr. Hancock said 9 chains and 60 links, and Mr. Reynolds says 9 chains and 66 links distant. We found this witness
663 tree and established a corner and set therein a stone, a marked stone, in a mound of stones and earth at the distance and bearings given. My recollection is that that witness tree was about 30 inches in diameter; perhaps it would exceed that. It was a good solid tree.

Thence we ran to station 37. Mr. Hancock says: "Thence north, 84 degrees west, 105 chains and 34 links to a post marked S. F. 37 in stone mound, station, and a corner of the Las Virgines rancho, at the east base of the Santa Susanna mountains." That is the call. Mr. Reynolds reads: "North, 84 degrees west, 105.34 chains set black oak stake marked S. F.

664 37 in mound of rock, being station 1 also of Rancho El Escorpion, set on east base ridge of Sierra Santa Susanna," which is station number one of the Escorpion.

The first point at which the survey of the Mission San Fernando intersected the Escorpion was at station 4 of the Escorpion. In making our survey, we found the course from 36 to 37 as follows: "North, 83 degrees 41 minutes west, 105.54 chains to a post," which, at the time of making this entry, had already been set in the stone mound by myself, which I found on this ridge and base of the sierra, which
665 rises right up, but there is a little ridge situated as called for and described in these several notes. It is the corner of what was known as the Las Virgines before the grant was rejected.

In the survey of these lines, we always had the field notes present with us, made by Mr. Thompson, who had surveyed the Rancho El Escorpion for the patent, in which he names these several stations as the stations of the Rancho San Fernando.

Referring again to the house of Leonis, which Hart lived in, I don't know that I went into the yard. I took a bearing by the houses there. There are a
666 number or buildings now—probably some added. I took a bearing upon the corner of an old adobe, and sent my chainman forward to make the measurement.

Station 42 of the ex-Mission San Fernando is also a station of the San Vicente y Santa Monica rancho. The station is marked by a stone in a mound of stones. The larger stone was marked S. F. and the stake lying alongside of the mound on which the letters S. V. S. M. with some number of station, I don't remember which, in Roman characters, marked thereon, the stake for the boundary of the San Vicente, giving the number.

667 Going back again to the Leonis house, we tied the corner 34 of the San Fernando to the southeast corner of an adobe house which bore north, 68 degrees and 8 minutes west, distant 8.52 chains. I think the building designated as the Leonis house stood a little to the northwest. The Leonis house, now occupied by Mr. Hart, is a little northwest of the house we tied to, and is a little to the northwest of the station 34, and about ten chains, I should say, from the corner. There were no houses west of those.

Re-cross examination.

668 Neither in the Hancock or Reynolds survey are these houses mentioned, but in the survey of the Rancho El Escorpion by Mr. Thompson, which is already patented, we found reference to the houses. I had the notes with me at the time. I mention these houses in the call of my survey closing the thirty-third course, running from station 33 to station 34, being the northwest corner of the Rancho El Escorpion.

I. N. VAN NUYS

recalled and testified in behalf of plaintiff as follows:

669 I have known of the Miguel Leonis house since '71 or '2. It was then occupied by him, and was so occupied up to a few years before his death, when he moved over on to the Ventura road. I understand that Mr. Hart lives there now, and that he is in possession of the Escorpion. The Leonis house is a little north of west of station 34 of the San Fernando, about 200 yards, I should say, or in that neighborhood. Between the house and the station, you first come to an adobe building that he used to occupy as a sort of barn or warehouse, and after that the house. The occupation of the Escorpion, during the twenty years that I have known it, has never extended any

670 further west than station 34 of the San Fernando ranch, as shown on the Reynolds map.

C. A. ENSIGN,

recalled for the purpose of further examination by the defendant.

It took us two months to make a survey of the San Fernando. We were occupied a portion of February, March and April. I think we commenced the survey about the 26th day of February. That is my memory now. Somewhere along in the last days.

HORACE BELL,

called on behalf of plaintiff, sworn, and testified as
671 follows:

I am an attorney by profession, and have resided in Los Angeles since 1852. Knew Miguel Leonis very well in his lifetime. Know the house where he lived, near the Escorpion ranch. Passed along there in about 1870 or '71 or '2, about the time the survey of the San Fernando was being made by Reynolds. Have had my attention directed to it very particularly since Miguel Leonis' death, being interested personally in the Escorpion. Have seen the house at various times within the last few years, very frequently.

672 (Attention of witness was called to plaintiff's exhibit 28, being certified copy of the plat marked Escorpion ranch.)

The Miguel Leonis house is here (indicating square black mark, west of station 34 of San Fernando.) There is a house that stands a little to the west of this house of Leonis; there is a house there now, about 150 feet away. On the south of the arroyo, about due south of the Leonis house, there was the ruins of an old house and the remains of a well, but there is no signs of a house, viewing it from the place where Leonis lived, but it is quite evident that somebody had lived there. The house

673 which I show you as the Miguel Leonis house, on this map, is an adobe house, or rather, two adobe houses. They were old houses in '71.

C. A. ENSIGN,

recalled for plaintiff, testified on cross-examination as follows:

Mr. Wright and I jointly made a map of our survey of the San Fernando grant. It is on file in the recorder's office.

Re-direct examination.

In making our survey of the San Fernando grant we had the field notes from the office of the United
674 States suveyor general of all the lines that had been run anterior to the survey of the ranch boundaries, including section lines, and in making that survey I took the bearing of the Leonis house from the corners of sections 33 and 34, 3 and 4, township one north, range 17 west, and I found the same by the needle course as was given in the field notes, south, 3 degrees east, which was almost due south.

The house seemed to have been built in two parts. The bearing to the center of the house, which appeared to have been enlarged, was a little more to the west, that is, not quite so much east. I think
675 the bearing was practically as given.

Re-cross examination.

I heard part of the testimony of Major Bell this morning. I believe he stated there were two or three buildings at the Leonis house. I know there are several buildings there. There is one principal house there, present dwelling, and several buildings that were close together, perhaps all together, joining. I don't know whether they were attached as sheds or whether there was alleyways between them. I didn't go into the buildings.

At the corner of sections 33 and 34 there is a mound of stones and a post marked with the desig-

676 nation of the corner. There was also present a black walnut having the bearings and distances as stated in the field notes. It was upon the rocky hillside and beyond a road, which we crossed, as stated in the field notes. I don't remember whether there was the remains of an older stake or not. There was a rock mound which was very distinct, with a stake in it. I apprehend this as a later re-marking around the walnut tree, and the bearing I know was what I relied upon for the identity of the rock mound. I do not discover that I made any entry at this point of finding an old
677 stake. I entered a stake marked township one north, range 17 west, and township two north, 17 west, sections 3, 4, 33, and 34. I now recollect that the stake was pretty sound.

Re-direct examination.

(Witness marks upon plaintiff's exhibit 28 the true location of sections 3, 4, 33, and 34, in lead pencil, and testifies:)

The place marked in red ink on this map as the corner of sections 3, 4, 33 and 34, is not the section corner. There is a corner at this place, where that is marked for a section corner as exhibited on this
678 map, with reference to this hill country and also its relation to the corner of the Escorpion, but it is a quarter post, or a quarter section corner which is so situated, and would be northeast, a little more east than northeast, from the Miguel Leonis house. The delineation of these hills (showing them on the map,) is quite correct as to the boundary situation of the El Escorpion ranch, and the position of this corner which is so marked here, in red ink, is quite properly exhibited, excepting by its number, which is wrong.

679 E. T. WRIGHT,

called on behalf of plaintiff, sworn and testified as follows:

I am a civil engineer and surveyor. Am now county surveyor of Los Angeles county. With Mr. Ensign I made a survey of the Rancho San Fernando in the spring of '92. I made a calculation of the area contained in the San Fernando grant, according to the several surveys of the exterior lines. The patent area is 121,396.13 acres. Our area was 121,311.10 acres, our acreage being 85.03 acres less than the patent area. I have not the area of the

680 Reynolds survey.

The plaintiff next introduced and read in evidence the judgment roll in the case of Los Angeles Farming and Milling Company vs. Hoff, case No. 16,240 in the Superior Court of the county of Los Angeles. The record in said action showed that the said case was brought by the plaintiff in ejectment against W. H. Hoff and one hundred and forty others, on the 9th day of October, 1891. The case was tried before a jury, verdict rendered for the plaintiff, and judgment entered in favor of the plaintiff and against the defendants on the 11th day

681 of June, 1892. Motion for new trial was made by the defendants, which was denied by the lower court, and an appeal taken and judgment affirmed by the Supreme Court of the state of California. The lands involved in said action were the same lands involved in this action.

The plaintiff next introduced and read in evidence a patent for the Rancho Providencia, issued by the United States government to D. W. Alexander, *et al.*, final confirmees of said grant, on the 6th day of August, 1872, recorded the 4th day of April, 1873, in book 1 of patents, page 238, in the office of the recorder of Los Angeles county, state of California.

682 Said patent showed that the Rancho Providencia was co-terminous in its western boundary with the Rancho San Fernando. And, in connection therewith, plaintiff also introduced, as its exhibit No. 23, a certified copy of the map accompanying said patent of the Rancho Providencia, which said map was in the words and figures following, to wit:

[Here insert copy of map accompanying patent of Rancho Providencia.]

Map 2

683

The plaintiff next introduced and read in evidence the patent for the Rancho Tejunga, which said patent was issued by the United States government, on a Mexican grant, to D. W. Alexander, *et al.*, final confirmees of said grant, and was dated October 19th, 1874, and recorded September 4, 1875,
684 in book 1 of patents, page 556, in the office of the recorder of Los Angeles county, state of California. Said patent showed that said Rancho Tejunga was co-terminous on its western boundary with the Rancho San Fernando.

And, in connection therewith, plaintiff also introduced, as its exhibit No. 23½, the certified copy of the map accompanying said patent of the Rancho Tejunga, which said map was in the words and figures following, to wit:

[Here insert copy of map accompanying patent of Rancho Tejunga.]

Map 3

685 The plaintiff also introduced in evidence, as its exhibit No. 24, plat of township 1 north, range 14 west, S. B. M., certified by the officers of the United States land office at Los Angeles, which said map is in the words and figures following, to wit:

[Here insert plaintiff's exhibit 24.]

Map 8

686 Plaintiff next introduced in evidence, as its exhibit No. 25, plat of township 2 north, range 14 west, S. B. M., certified by the officers of the United States land office at Los Angeles, which said map is in the words and figures following, to wit:

[Here insert plaintiff's exhibit No. 25.]

Map 5.

687 The plaintiff next introduced in evidence, as its exhibit No. 26, plat of township 2 north, range 15 west, S. B. M., certified by the officers of the United States land office at Los Angeles, which said map is in the words and figures following, to wit:

[Here insert plaintiff's exhibit No. 26.]

Map 7

The plaintiff next introduced in evidence, as its exhibit No. 27, plat of township 3 north, range 15 west, S. B. M., certified by the officers of the United States land office at Los Angeles, which said map is in the words and figures following, to wit:

[Here insert plaintiff's exhibit No. 27.]

Map 4

688 Plaintiff next introduced and read in evidence the patent of the Rancho El Escorpion, which is a patent issued by the United States government to Urbano, *et al.*, final confirmees thereof, based upon a Mexican grant, said patent being dated December 11, 1876, and recorded June 16th, 1880, in book 2 of patents, page 509, in the office of the recorder of Los Angeles county, state of California, which said patent showed that the northern exterior and southern boundaries of said Rancho El Escorpion were co-terminous boundaries of the Rancho San Fernando.

689 And, in connection therewith, the plaintiff introduced, as its exhibit No. 28, a certified copy of the map accompanying said patent to the Rancho El Escorpion, which said map is in the words and figures following, to wit:

[Here insert map, plaintiff's exhibit 28.]

Map 1

The plaintiff next introduced and read in evidence
690 the patent of the Rancho San Vicente y Santa Monica, issued by the United States government to R. Sepulveda, final confirmee thereof, under a Mexican grant, said patent being dated July 3, 1881, and recorded August 10, 1881, in book 3, page 15, of patents, in the office of the recorder of Los Angeles county, state of California, which said patent showed that the said rancho San Vicente y Santa Monica was bounded on the north by the Rancho ex-Mission San Fernando.

And, in connection therewith, plaintiff introduced as its exhibit No. 22, a certified copy of the map accompanying said patent to said Rancho San Vicente

691 y Santa Monica, which said map is in the words and figures following, to wit:

[Here insert copy of map, plaintiff's exhibit 22.]

Map 12

Thereupon plaintiff rested.

Defendants' counsel then offered in evidence the following documents:

Before the commissioners to ascertain and settle
692 private land claims in the state of California.

Eulogio de Celis gives notice that he claims a tract of land situated in the present county of Los Angeles known by the name of Mission of San Fernando, bounded as follows: On the north by the Rancho of San Francisco, on the west by the mountains of Santa Susanna, on the east by the rancho of Miguel Triumfo, and on the south by the mountains of Portesuelo, which tract is supposed to contain fourteen square leagues.

Said land was sold to the said Celis by a deed of grant dated the seventeenth day of June of the year
693 eighteen hundred and forty-six, by Pio Pico, constitutional governor of the Californias thereto duly authorized by the supreme government of the nation and by a decree of the departmental assembly of April third, eighteen hundred and forty-six; said sale was made for the sum of fourteen thousand dollars, which was paid by the said Celis to the said Pio Pico, who acknowledged the receipt thereof, as will more fully appear by reference to the aforesaid deed of grant, copy whereof marked A is hereto annexed, together with a certified copy of the instructions from the minister of war and navy to the governor of the Californias, marked B, and a certified copy of

694 the entry made in the archives of the former *Spanis* and Mexican territory of department of Upper California, of the aforesaid deed of grant marked C, which said documents are hereto annexed.

Claimant avers that the aforesaid deed of sale contains the condition that the government of Mexico shall have the right to annul the contract by reimbursing to this claimant the aforesaid sum of fourteen thousand dollars, with the current rates of interest, and in case said sum is not reimbursed within said eight months, said Mission of San Fernando shall be his in full property. And this claim-
695 ant avers that said sum of fourteen thousand dollars was never reimbursed to him by the Mexican government, or by any person whatsoever.

Said Mission of San Fernando was leased by the government of Mexico to Andres Pico in December, 1845, for the term of...years, which lessee has been in the occupancy of the said property up to the present date.

Claimant further avers that he knows of no other claim to the aforesaid mission, and he relies on the documents above referred to and witnesses he shall produce to substantiate his claim.

696 N. HUBART,
Attorney for Claimant.

(Endorsed.)

No. 378. Eulogio de Celis, San Fernando. Petition filed in office Oct. 7th, 1852. Geo. Fisher, Sec'y. Recorded in record of petitions, Vol. 1, page 303 and 304.

GEO. FISHER, *Sec'y.*

Office of U. S. surveyor general for California.

I, surveyor general of the United States for the state of California, and, as such, having in my office and in my charge and custody a portion of the

archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages of paper numbered from one to two inclusive exhibit a true, full and correct copy of the original of a document in case No. 378 on the docket of the late board of land commissioners in which Eulogio de Celis was claimant for the Mission of San Fernando. Endorsed: "No. 378, Eulogio de Celis, San Fernando. Petition filed in office Oct. 7th, 1852. Geo. Fisher, Sec'y. Recorded in record of petitions, Vol. 1, pages 303 and 304. Geo. Fisher, Sec'y and now on file in this office and in my custody; that I have carefully compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of such original.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, the 19th day of November, 1894.

[SEAL.] W. S. GREEN,

U. S. surveyor general for California.

Also the following documents:

TRANSLATION.

The undersigned constitutional governer of the department of the Californias, in virtue of the powers vested unto him by the supreme government of the nation, and in virtue of a decree of the honorable departmental assembly of April third of the present year, to raise means for the purpose of maintaining the integrity of the territory of this department. For the sum of fourteen thousand dollars, which he receives, sells unto Don Eulogio de Celis and his heirs, the ex-Mission of San Fernando

700 with all *is* properties, estates, lands and movables with the exception of the church and all its appurtenances which remains for public use. Said purchaser obligating himself to maintain on their lands the old Indians on the premises during their lifetime with the right to make their crops, with the only condition that they shall not have the right to sell the lands they cultivate and any other which they possess without anterior title from the departmental government, for all of which the aforesaid Señor Celis shall be acknowledged as the legitimate owner of the aforesaid ex-Mission of San Fernando,
701 to use the same as to him shall seem best, guaranteeing unto him as this government does guarantee, that he is well possessed of the aforesaid estate with all the prerogatives granted by law to purchasers, with the only condition that the above mentioned purchaser shall not take possession within the space of eight months from the date hereof, within which delay the government shall have the right to annul this contract by reimbursing to the aforesaid Señor Celis the sum of fourteen thousand dollar with interest at the current commercial rates;
702 but if this reimbursement is not operated within the aforesaid eight months, this sale shall be valid.

The above mentioned purchaser binds himself to warrant to the father minister of the aforesaid establishment his subsistence and clothing with all possible decency, together with the rooms assigned to him or those which he justly requires.

And for the estalishment of this fact and the security of the purchaser, the present document is issued and shall be acknowledged and respected by all the authorities of the department for its better accomplishment.

And in faith of which the undersigned and secretary of the department grant their authority and

703 affix their signatures in the city of Los Angeles on this ordinary paper for want of stamped paper, the seventeenth of June one thousand eight hundred and forty-six.

PIO PICO.

JOSE MATIAS MORENO,
Secretary pro tem.

Let entry of the above be made in the respective book.

MORENO.

[Endorsed.]

No. 378. Eulogio de Celis: San Fernando:
704 C. Translation of the deed of grant. Filed in office Oct. 7th, 1852. Geo. Fisher, Sec'y. Annexed to the deposition of Pio Pico, Oct. 19, 1852; Geo. Fisher, Sec'y. No. 1. Recorded in record of Ev. vol. 19, page 106.

–over–

OFFICE OF THE U. S. SURVEYOR GENERAL,
FOR CALIFORNIA.

I, surveyor general of the United States for the state of California, and as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory
705 or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages of paper numbered from one to two inclusive exhibit a true, full and correct copy of the original of a document filed in case No. 378 on the docket of the late board of land commissioners in which Eulogio de Celis was claimant for the Mission of San Fernando; endorsed No. 378 Eulogio de Celis San Fernando: C, translation of the deed of grant, filed in office Oct. 7th, 1852, Geo. Fisher, sec'y.

706 Annexed to the deposition of Pio Pico Oct. 19, 1852 Geo. Fisher, sec'y. No. 1. Recorded in record of Ev. vol. 19, page 106. And now on file in this office and in my custody; that I have carefully compared the same with said original,and that the same is a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco this 10th day of November, 1894.

[SEAL.] W. S. GREEN,

707 *U. S. Surveyor General for California.*

Also the following documents:

No. 378.

Eulogio de Celis, *vs.* The United States. } For the ex-Mission of San Fernando in the county of Los Angeles containing about thirteen square leagues.

This claim is based upon a grant issued to the claimant by Governor Pio Pico on the 17th day of June, 1846.

The grant purports to have been made in consideration of the payment of the sum of fourteen
708 thousand dollars in money. Pio Pico testifies that he executed the grant at the date that the same bears, and that it was made under special instructions of his government for the purpose of raising the necessary funds to enable the department to prepare for a defense against the attack of the Americans and that the sum of fourteen thousand dollars was actually received by him from the grantee in consideration thereof and that the funds were used by him for the benefit of the nation in the defence of the same. The genuiness of the grant is clearly established and the circumstances under which it

709 was made so clearly explained as to leave no doubt, but it was done in good faith.

The grant contains a clause reserving the right of the government to annul the same at any time within eight months from the date thereof by refunding to the grantee the consideration money together with the usual rate of interest thereon, which rate, if the transaction had been between individuals changed the nature of the grant to that of a mortgage. But to apply the doctrine in this case would be in effect to compel the grantee to re-
710 main a mortgagee without power to foreclose the mortgage against the government, in as much as the government stands upon its sovereignty not acknowledging the rights of individuals to have their actions at law against it, only in cases where provisions are made by special statute.

We think the petitioner *is* this case is entitled to a confirmation and a decree will be entered accordingly.

(Confirmed.)

(Endorsed.) No. 378. Eulogio de Celis, ex-Mission of San Fernando. Opinion of the board delivered by commissioner S. B. Farwell. Filed in
711 office July 3d, 1855, Geo. Fisher, Secy. Recorded in record of decisions vol. 3, page 102. Geo. Fisher, Secy. –over–

OFFICE OF U. S. SURVEYOR GENERAL FOR CALIFORNIA.

I, surveyor general of the United States for the state of California and as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California as also the papers of the late board of land commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the two preceding and here-

712 unto annexed pages of paper numbered from one to two inclusive exhibit a true, full and correct copy of the original of a document filed in case No. 378 on the docket of the late board of land commissioners in which Eulogio de Celis was claimant for the ex-Mission of San Fernando; endorsed "No. 378, Eulogio de Celis, ex-Mission of San Fernando, opinion of the board delivered by commissioner S. B. Farwell, filed in office July, 3d, 1855, Geo. Fisher, Secy. Recorded in record of decisions vol. 3, page 106, Geo. Fisher, Secy. And now on file in this office and in my custody; that I have carefully com-
713 pared the same with said original, and that the same is a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 22d day of November, 1894.

[SEAL.] W. S. GREEN,
U. S. Surveyor-General for California.

Eulogio de Celis,
vs. } No. 378.
The United States.

714 DECREE OF CONFIRMATION.

In this case on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid and it is therefore decreed that his application for a confirmation thereof be allowed.

The land of which confirmation is hereby given is called the ex-Mission of San Fernando situate in the county of Los Angeles, and to be located as the boundaries are known and recognized on the 17th day of June, 1846.

Bounded on the north, by the Rancho called San Francisco, on the west, by the mountains Santa

715 Susanna, on the east, by the Ranch Miguel, and on the south, by the Porte Suelo.

R. AUG. THOMPSON,
S. B. FARWELL, *Commissioners.*

Filed in office July 3rd, 1855. Geo. Fisher, Secy.

United States of America }
Southern Dist. California. }

I, John O. Wheeler, clerk of the United States District Court, for the Southern District of California, do hereby certify the above and foregoing to be a full, true and correct copy of the decree of the board of land commissioners to ascertain and settle
716 private land claims in California rendered in the case of Eulogio de Celis, claimant, against the United States for the place called ex-Mission of San Fernando, as the same appears in the transcript of the record of proceedings, etc., had therein by said board now on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at Monterey, this 19th day of February, *A. D.* 1863.

[SEAL.] JOHN O. WHEELER,
Clk. U. S. Dist. Ct. Sth. Dist. Cala.

In offering the three documents last above men-
717 tioned, defendants' counsel stated that they proposed to prove by said petition and by said alleged grant, that said Eulogio de Celis, the petitioner, did not claim said lands embraced in said alleged grant, or any part thereof, by virtue of any right or title derived from the Spanish or Mexican government. That they wished to prove by said documents that said grant was void, for the reason, first, that it was an attempted grant of mission lands reserved from and not subject to grant, under the laws and regulations of the Mexican government; and, further, that the facts stated in said petition and in said grant proved that said board had no jurisdiction over the

718 subject matter of said case, and that the decree confirming said claim was without jurisdiction and void.

Plaintiff's counsel objected to the introduction of each and all of said document, on the ground that the same were, and each of them was, incompetent, irrelevant and immaterial. The court sustained said objection, and ruled out said evidence, to which rulings, and each of them defendants' counsel excepted.

Defendants next offered in evidence the report of survey of the San Fernando grant by Hancock,
719 marked defendants' exhibit 4.

Field Notes of the Final Survey of the ex-Mission of San Fernando,

Situated in the County of Los Angeles, State of California, executed by Henry Hancock, Dep. Sur. in conformity with the instructions bearing date Sept. 1, 1858.

DECEMBER 2nd, 1858.

Commencing at a point on the N. W. slope of a spur of the mountains of Cahuenga shown by Don Andres Pico, one of the claimants, at which I set a
720 post marked S. F. 1, in an irregular mound of rocks for sta. 1 from which an oak tree 14 in diam. bears N., 26¾° E., dist. 1.62 chs. another do 7 in diam. bears N., 25¼° W., dist. 2.00 chains. Variation 13° 30′ E.

COURSES, CHS.

Thence along the boundary of the Rancho Providencia Cahuenga, N., 26½° W., 29.00 across river Los Angeles 50 lks. wide, course S., 85 E., and at about 5 chs. below a dam or head of an asaque of water 73.74 to a point from which the house of Cahuenga bears S., 42½° W., 111.24 to a point from which the house of Cahuenga bears S., 25½° W., 161.00 across

721 road leading to Los Angeles, course S., 64 east, 190.00 to sta. No. 2, and marked an oak tree 36 in diam. for same S. F. 2. This station is also a corner of the Ranchos Providencia y Cahuenga and San Rafael. Thence along boundary of the Rancho San Rafael, N., 8° W., 35.00 enter chapparal; 233.00 across an old trail, course N., 54 W., 389.00 to south base of low hills ranging N., 60 W., 393.00 to a corner of the Rancho San Rafael and Tejunga.

Thence along boundary of the Rancho Tejunga, 444.50 across road to Tehunga, course N., 56 W., 543.00 across road, course N., 5 E., and leave
722 hills 560.00 cross road N., 10 E.; 627.00 to sta. No. 3, at the mouth of a cañada on the south base of the Sierra Madre or San Fernando mountains. Set a post S. F. 3 and charred stake in mound from which a sycamore 12 in diam. bears S., 51° E., dist. 150 lks.; another 10 in diam. bears N., 13½° W., dist. 3.85 lks. At this station leave the boundary of the Tehunga rancho; thence along the south base of the mountains, S., 81° W., 10.50 to sta. No. 4 and drove a stake.

Thence N., 82½° W., 21.50 to sta. No. 5 and drove stake; N., 74½° W., 64.00 to sta. No. 6, and drove
723 stake; S., 82° W., 3.76 intersected the 14th range line west of the San Bernardino meridian 1.77 chs. north of the ¼ section corner on the west boundary of Sec. 6, Twp. No. 2 N., of the base line of range No. 14 west, of the San Bernardino meridian, 49.50 to sta. No. 7, and drove a stake; N., 41 W., 22.50 to sta. No. 8, and drove stake; N., 20 W., 12.00 to sta. No. 9 and drove a stake; N., 3 W., 53.50 to sta. No. 10 and a drove stake; N., 50 E., 6.00 to sta. No 11 and drove a stake; N., 16½° E., 105.00 to sta. No. 12 on the west slope of a hill covered with chapparal, some 5 chs. east of the mouth of a cañon ranging N., 13

724 W., and set a post marked S. F. 12 in an irregular mound of rock.

Thence N., 66° W., 80.00 to a point on the top of S. W. slope of a small spur of the mountain from which the buildings at the ex-Mission of San Fernando bears S., 34 W., and drove a stake, S., 86° W., 80.00 to a point from which the buildings before taken bears S., 20° W., 276.50 to station No. 14 and drove a stake; N., 54½° W., 100.00 to road from Los Angeles over the San Fernando hill to Fort Tejon leading up the center of a cañada some two miles long and about 7 chs. wide, course N., 50° W., 132.00
725 to sta. No. 15 in cañada and drove post marked S. F. 15 from which an oak tree 18 in diam. bears S., 50½° west, dist. 159 lks.

Thence S., 47¾° W., 182.00 to a blk. walnut tree 5 in diam. on the northern slope of a high hill covered with wild oats and marked same for sta. 16.

Thence N., 75½° W., 194.00 to sta. No. 17 and marked an oak tree 20 in diam. on the mountains, S. F. 17.

Thence S., 75 W., 26.50 to sta. No. 18, and set a post marked S. F. 18 and charred stake in an irregular mound of rock which corner has been one of
726 the stations of the coast survey.

Thence S., 38 W., 15.00 to sta. No. 19 and drove a stake; S., 4¾° W., 62.50 to sta. No. 20 and drove a stake; S., 77½° W., 14.00 to a point from which a spring of water bears S., 35 E., dist. 200 lks. 51.00 cross a stream of water 8 lks. wide, course S., 12½ W., through a cañon about 30 lks. wide 60.00 to sta. No. 21 and drove a stake; S., 13½° W., 84.00 acr ss a stream of water 8 lks. wide, course S., 8 west, 88.00 to sta. No. 22 and drove a stake; S., 7 E., 4.50 across a stream of water 8 lks. wide, course S., 35 W., 17.00 across a stream of water 8 lks. wide, course S., 42 E., [W.]?

727 27.00 to sta. No. 23 and drove a stake;

S., 83 W.,	1.00	"	No. 24	"	"
S., 7 E.,	10.50	"	No. 25	"	"
S., 24 E.,	2.50	"	No. 26	"	"
S., 15 W.,	5.00	"	No. 27	"	"
S., 5 W.,	1.00	"	No. 28	"	"
S., 22½° W.,	7.00	"	No. 29	"	"
S., 41 W.,	6.00	"	No. 30	"	"

S., 38 W., 272.00 to a dead oak tree marked S. F. 31, 18 in diam. on south E. base of the mountain called Santa Susanna; S., 39 W., 8.30 to sta. No. 32 and drove a stake; N., 85½° W., 72.00 to a large
728 sandstone rock marked S. F. 33 embedded in earth some 9 feet long, two feet thick and 3 feet high at the easterly base of a high rocky range called Sierra Santa Susanna from which a live oak 10 in diam. bears S., 74½° E., dist. 4.50 lks.

Thence S., 12½° W , 182.00 intersected the south boundary of Tp. No. 2 N. of the base line of range No. 17 W. of the San Bernardino meridian 25.00 chs. west of corner to secs. 3, 4, 33, and 34 and set a stake at point of intersection, 203.00 to a live oak 24 in diam. and mark the same S. F. 34 from which another oak tree 18 in diam. bears S., 7 W., dist. 168
729 lks.

Thence along on the northern boundary of a tract confirmed to the Indian Urbano and others; S., 84 E., 105.34 to station No. 35 and set a post marked S. F. 35 and charred stake in mound from which a white oak 40 in diam. bears S., 5¾° E., dist. 14.50 chs.

Thence along the east boundary or the tract of Urbano *et al.*, S., 6 W., 105.34 to station 36 and set a post marked S. F. 36 in mound as per instructions from which an oak tree 24 in diam. bears S., 35½° W., dist. 960 lks., another do 15 in diam. bears S., 31 W., dist. 10 chs.

730 Thence N., 84 W., 105.34 to sta. No. 37 set a post marked S. F. 37 in a stone mound on the east base of the ridge called Sierra Santa Susanna.

Thence along the boundary of the Rancho Las Virgines, S., 33½ E., 158.00 to a live oak tree 40 in diam. with an ancient mark of a cross and letter D the same being claimed by Señor Dominguez of the adjoining Rancho Las Virgines as being in his boundary and situated on the north side of the road leading to Santa Barbara course west and west side of a dry gully some 20 lks. wide course N. W. marked live oak S. F. 38.

731 Thence S., 53½° E., 92.00 to sta. No. 39 and blazed a live oak 18 in diam. situated on the east side of the mouth of a broad cañada called the Cañada de los Calabasas or squashes coming from the S. W., N., 58½° E., 25.00 to sta. No. 40 and marked a live oak 30 in diam. S. F. 40 for same; N., 89° E., 39.00 to sta. No. 41 and set a brown sandstone rock 20 in. long, 8 in. wide and 4 in. thick marked S. F. 41 in an irregular mound of rock on the N. W. slope of a low spur of the mountain on the south; S., 65 E., 272.00 to sta. No. 42 to a high point on the mountain and set a sandstone rock 12 in. long, 12 in.
732 wide and 10 in. thick marked S. F. 42; N., 84 E., 345.00 to sta. No. 43 on a very high peak some 500 feet above the San Fernando valley and raised an irregular mound of rocks; S., 83¾° E., 668.00 to sta. No. 44 a sandstone rock marked S. F. 44 on the west side of the road from Los Angeles to San Fernando course N. W. and summit of Cahuenga pass, principally buried in earth with a face cropping out of same 14 in. diam; N., 15¾° E., 87.00 to sta. No. 1 or place of beginning.

REMARKS.

On the east of the line from sta. No. 1 to sta. No. 2 Don Andreas Pico claims a tract of sowing ground

733 some 60 chains long and 15 wide down the Los Angeles river to a certain point of the Cauhuenga mountains, which he contends is the place called for in the descriptive portion of the title to the Rancho San Rafael as "adonde se descabesa el rio de la Sierra Cauhuenga" (the point where the river forms a head or new head at the mountain of Cahuenga) and the claimants of the said Rancho San Rafael show the source of a small stream which flows into the river Los Angeles and is some 15 chains west of the said line; which they contend
734 answers the descriptive call of the said Rancho San Rafael and since after due vigilence and renewed efforts to have the respective parties settle on some compromise line, and failing to obtain satisfactory proof concerning the matter in question, I finally settled on the line given in the foregoing field notes as the one which in my own judgment after having obtained all of the information which seemed under the circumstances attainable was the proper one.

Between stations Nos. 2 and 3, Pico left out land to the east of the line to which he was entitled according to the decree, but considering it of no value he did not wish to include it. The lines from
735 stations 14 to 15, 15 to 16, 30 to 31, 41 to 42, 42 to 43 and from 43 to 44 have been obtained by traverse lines on account of the true lines having fallen in the mountains where it was impracticable to measure.

Between stations Nos. 2 and 3, I was unable to make a connection with the north boundary of Tp. 1 N., R. 14 W., for the reason that the sandy nature of the soil is such as to have left no trace of the corners which we could meet with. From station No. 43 we found by traverse the ¼ section corner on the west boundary of Sec. 19, Tp. 1 N. of the base line of

736 range No. 15 west of the San Bernardino meridian, to bear N., 28 W., dist. 111 chains.

There are included within the boundaries designated in the decree of confirmation of this ex-Mission San Fernando two confirmed claims, firstly, the Rancho "Encino," of one league square, and secondly, by the church property of the said mission, both of which fall within the limits of this survey, and, in the case of the latter, there is no probability of a final settlement of the segregation lines short of a long delay for the courts to determine on them, for the confirmees of the mission lands contend that
737 the decree of the land commission in favor of the church gives to it no more than the quadrangular tract including the church cemetery yards and buildings, whereas, the representatives of the interests of the church claim under the words appurtenances or curtilages (used in the decree in their favor), the two orchards and vineyards in the vicinity of the church and buildings. Now, therefore, since the act of the 3rd of March, 1851, makes the patent conclusive between the government and claimants only, and declares that it shall not affect the rights of third parties, and that all patents for lands in Cali-
738 fornia derived from the Mexican or Spanish governments have the express reservation provided by that act, I am of the opinion that the patent ought to issue to claimants of the lands mentioned in the foregoing field notes, which lands are confirmed to them under their decree of confirmation, without any reservation or a mention of such interior tracts as they might have embraced, for to withhold it from them, and thereby deprive them of the use of the entire tract during the pendancy of the question between them and other parties who have decrees of confirmation to certain portions of it, would, while the law and reservation clause of the

739 patent afford to them ample protection, in effect be operating to make the executive department of the government act as an engine of oppression by constraining them to a speedy and perhaps a disadvantageous settlement of what they might deem an unconcionable demand, or, as in this particular case, what they deem the acceptance of an unwarrantable construction of the decree in favor of the church. Further, such a course would work a hardship on the surveyor, by deterring him from being reimbursed in the payment of the expense to which he is subjected, so that the actual present worth of what
740 in time he might receive would not be adequate to its liquidation, to say nothing of the remuneration which of right ought to come to him.

GENERAL DESCRIPTION.

This tract of land is bounded on the east from station No. 1, the tract called La Providencia and Cahuenga up to the terminus of the line between station Nos. 1, 2, then to about 400 chs. on the line between stations Nos. 2 and 3, the Rancho San Rafael; and thence up to the base of the mountains on the north by rancho called Tejunga, the Rancho Las Virgines borders on this tract from the Rancho
741 El Escorpion of the Indians on the west to the S. W. corner.

The valley comprised by this tract of land, and called San Fernando valley, is for the most part well adapted to the growth of the olive, pomegranate, orange and the vine, and also the various classes of grain. In beauty and sublimity of scenery, quality of soil and agreeableness of climate, it is doubtless unsurpassed on the face of the earth.

State of California, }
County of Los Angeles. }

We, Benjamin Virgin and Evert C. Evertsen, do solemnly swear that we will well and faithfully exe-

742 cute the duties of chain carriers in the final survey of the "mission lands of the ex-Mission of San Fernando, situated in the county and state aforesaid; that we will level the chain upon uneven ground, and truly plumb the talley pins, whether by sticking or dropping the same, and that we will report the true distance to all notable objects and the true length of all lines, that we may assist in running to best of our skill and ability.

BENJ. VIRGIN.
EVERT C. EVERTSEN.

Subscribed and sworn to by the above named per-
743 sons this 2nd day of December, 1858, before me in camp.

HENRY HANCOCK, *Dep. Sur.*

We, Ebenezer Hadley, as compassman, Evert C. Evertsen, as axeman, and Romulo Pico, as flagman, do solemnly swear that we will well and faithfully execute the duties respectively of compassman, axeman and flagman, according to the instructions given us, and to the best of our skill and ability.

EBENEZER HADLEY, *Compassman.*
EVERT C. EVERTSEN, *Axeman.*
ROMULO PICO, *Flagman.*

744 Subscribed and sworn to by the above named persons, this 2d day of December, 1858, in camp before me.

HENRY HANCOCK, *Dep. Sur.*

A list of the names of the persons who assisted in running, measuring and marking the lines and corners described in the foregoing notes, exhibiting the respective capacities in which they acted:

Ebenezer Hadley, compassman.
Evert C. Evertsen, chainman.
John Warren, chainman.
Benjamin Virgin, axeman.
Romulo Pico, flagman.

745 *State of California,* }
County of Los Angeles. }

We hereby certify that we assisted Henry Hancock, deputy surveyor, in running, measuring and marking the lines, boundaries and corners of the mission lands of the ex-Mission of San Fernando, situated in the county and state aforesaid, and that the final survey of the same has been in all respects well and faithfully executed, and the boundary monuments, together with the monuments at the intersections of the lines of said lands with the lines of public surveyed lands planted according to the
746 instructions furnished by the surveyor general.

EBENEZER HADLEY, *Compassman.*
EVERT C. EVERTSEN, *Chainman.*
JOHN WARREN, *Chainman.*
BENJ. VIRGIN, *Axeman.*
ROMULO PICO, *Flagman.*

Subscribed and sworn to by the above named persons before me this 26th day of December, 1858.

HENRY HANCOCK, *Dep. Sur.*

State of California, }
County of Los Angeles. }

I, Henry Hancock, deputy surveyor do solemnly
747 swear that in pursuance of the instructions of J. W. Mandeville, surveyor general of the public lands of the United States in the state of California, bearing date the 1st day of September, 1858, and in strict conformity with the laws of the United States and the aforesaid instructions, I have faithfully executed the final survey of the "mission lands of the Mission of San Fernando, situated in the county and state aforesaid, and the foregoing are true and original field notes of such survey.

HENRY HANCOCK,
Dep. Sur.

748 *State of California,* }
City and County of San Francisco. }

Subscribed and sworn to before me by the said Henry Hancock, deputy surveyor, before me a notary public in and for the county and state aforesaid this 31st day of May, *A. D.*, 1859.

[SEAL] RAGAL H. THAYER,

–over– *Notary Public.*

DEPARTMENT OF THE INTERIOR, }
U. S. SURVEYOR GENERAL'S OFFICE. }

SAN FRANCISCO, CALIFORNIA, March 13, 1893.

I hereby certify the foregoing to be a full, true
749 and correct copy of the original field notes of the survey of the Rancho ex-Mission San Fernando as executed by Henry Hancock, U. S. deputy surveyor, in December, 1858, under instructions from this office dated September 1, 1858.

In witness whereof I have hereunto signed my name and caused the seal of this office to be affixed, this 13th day of March, 1893.

[SEAL.] WM. H. PRATT,

U. S. Surveyor General for California.

P. HIGGINS,

called in behalf of defendants, sworn and testified as
750 follows:

I reside in Los Angeles county, out here, northwest of here, about 12 or fourteen miles. Know the San Fernando ranch as claimed by its present claimants. I lived joining that grant for 19 years, in section 35, on the east half of section 35. I occupied the east half of section 35, running from the base line to what is supposed to be the Hancock survey. It is in township one north, range 15 west.

(Witness examines plaintiff's exhibit 30 and points upon it.) This is section 34, 5 and 6 (pointing to sections so numbered on south line of San Fernando ranch,) that is on the ground. That is

751 not surveyed, and I am living on the east half of section 35, running from the base line on what is supposed to be the Hancock survey. I am on the east half of section 35, running to what is supposed to be the line of the Hancock survey.

(Witness point to map and says): I live due north from the base line, up to what is supposed to be the Hancock survey, (showing on map), half a mile or quarter of a mile north of the Reynolds' line. Have been using it for agricultural and grazing purposes. There has been some controversy between myself and the grant people. J. B. Lanker-
752 shim came to my house at the time. He wanted to compromise with me in regard to his driving my sheep off of my feed, and I didn't hear to it, so he threatened to sue me for trespass, but they never have done it up to date. I am in possession of the land today. My cattle is there feeding on the same land. I have driven their cattle off for 19 years. I notified his herder. He claimed it was the grant and I claimed it was my homestead. It was supposed to be.

I couldn't say how much land there is in there north of the base line. There is a narrow strip,
753 may be a quarter of a mile, and widens as you go west. It commences at the Cahuenga Pass. It is a strip three miles wide, running from the Cahuenga Pass west, I should think I have been occupying forty acres of land within the Reynolds line.

I know a man named Lavalle, who lives west of me, who occupies land within the Reynolds line, the same as I do, a little more than I do. It widens as it goes west. He has been claiming it as government land. At present I have got about thirty head of stock, sometimes I have got as high as fifty. Mr. Lavalle has about twenty-five or thirty.

Charles Tullis is in section 36, east of me. He

754 occupies some land north of the Reynolds line. He used to have ten or fifteen head of cattle, I don't know how many he has got at the present time. His wife's folks have been in there over twenty years, claiming it as government land. Lavalle has been there occupying his about eight years.

I know a man named McCullough who is occupying land there, north of the Reynolds line. He has been there six or seven years, and he occupies about the same proportion north of the Reynolds line. He uses it as agricultural land. He has got no stock.

755 *Cross-examination.*

I don't claim to run down into the San Fernando valley, but claim to run where I suppose it to be the Hancock survey. The land of which I am in possession is in the hills. The Hancock line is not in the valley. Don't know anything about the San Vicente line, never looked that up. I am east of the San Vicente and live east of it, but don't know where the line of the grant is, and I live south of the Hancock line. Don't know where the southern boundary of the Encino line is. I generally know what they call the Hancock survey. I do know
756 where the old Los Angeles and Ventura stage road is, which runs through the San Fernando ranch. I never measured the distance, but I suppose I am half a mile, more or less, south of that road. The Hancock survey must run across section 35, and I only claim to what is supposed to be the Hancock survey. There is probably a quarter of a mile of section 35 north of the Hancock line. These other persons that I have been referring to simply hold up to the line which you claim to be the Hancock line. They don't attempt to go north of that line. I don't know where they hold to. I suppose at the present time I go no further than what they call the

757 Hancock survey. I went as far as the Hancock survey for 19 years. Those other people living there are supposed to go just that far, but I don't know how far north they claim, whether they claim any further north than I do or not; I can't tell. I have got nothing to do with them, yet they are my neighbors. And I don't know a bit about their affairs.

E. ROCHA,

called on behalf of defendant, sworn, and testified as follows:

I now live at the Virgines. I know where the
758 plaintiff's lands are situated, and what its occupation has been. In 1879 I lived at the Cahuenga pass, inside of the Rancho San Fernando. Was living in what is now claimed as the San Fernando. It was so claimed by Major Domo J. B. Lankershim. Took up a government claim there, and afterwards I went to work for a butcher named Simmons and left my brother-in-law in charge, and while he was gone they sued him and put him out, and he had to pay twenty dollars costs.

Cross-examination.

It is sixteen years since I lived at Cahuenga. The name of my brother-in-law was Julien Alvarez,
759 and he was ejected in a suit brought by the Los Angeles Farming and Milling Company.

C. C. GROVE,

called on behalf of the defendants, sworn, and testified as follows:

I now reside in Los Angeles City and have so resided since 1887, engaged in the surveying and abstract business. Been engaged in surveying, more or less, since I was thirteen years of age, about twenty-seven years.

I have been at the corner of sections 3 and 4, 33 and 34, on the south boundary of township 2 north, range 17 west. Found two corners marked as

760 government corner boundaries, at about 100 feet apart, both being marked as the corners to sections 3 and 4, 33 and 34, on the south boundary of township 2 north, 17 west.

I have compared the maps and field notes of the different surveys of the San Fernando ranch, by Hancock, Reynolds and Ensign, and find that they do not correspond in any particular. The Hancock field notes and the Hancock map correspond very well. The Reynolds field notes and Reynolds map do not correspond at all. The Ensign map and the Reynolds map do not correspond. I have made
761 upon the same paper a comparative drawing of all of these different maps. (Map hung on blackboard.) The Hancock survey is delineated upon this map by the shaded blue line (showing.) (Witness follows it clear around.) The shaded brown line is the survey of Reynolds, which commences at the same point and follows the brown line. The purple line is the Ensign survey (showing all of the lines.) It was drawn from the field notes of the different surveys, all on the same scale, by myself. It was drawn by scale and protractor, in the usual way maps are made, scale 40 chains to the inch.

762 I never calculated how much land lies outside of the Reynolds survey on the west which is not included in the Hancock survey, but it is several thousand acres, very rough, mountainous and rocky, good, possibly, for stone quarries. There may be a little water on it. About the same quantity of land lies south of the Hancock line that is embraced within the Reynolds line. That is rough, mountainous land and covered with grain to a considerable extent and considerable timber on it. The portion to the south is much better land than they left out on the west.

I have attempted to adjust the Reynolds map to

763 these other maps. The Reynolds survey is upon this map (showing on comparative map) as shown, but it does not correspond to the Reynolds map as in this exhibit (pointing to the Reynolds map, plaintiff's exhibit 29.) This comparative map is drawn according to the Reynolds field notes of the exterior boundaries. All these maps are made the same way, and the Reynolds map as introduced here in evidence as an exhibit (plaintiff's exhibit 29,) does not correspond with the map drawn as according to the Reynolds field notes. For instance, upon this exhibit 29 upon one side, giving the
764 courses and distances. Delineated upon that map is the lines purporting to correspond with those courses and distances. They do not so correspond. The exterior boundaries do not correspond with the interior township lines which he mentions, to save time.

Q. By Juror: Did you ever survey the original outside line to find out whether that is right or not? A. One or two lines near the Calabasas.

Q. I mean from the point at 18 on the original Hancock survey? A. No, sir; we were refused permission to make any survey.

765 At this point, deputy county recorder produced the original record of the Ensign map, as recorded in the recorder's office of Los Angeles county. Defendants asked leave to introduce a certified copy of said map, marked defendants' exhibit No. 1, which said map is in the words and figures following, to wit:

(Here insert copy of defendants' exhibit No. 1.)

[See small roll of maps, map No. 11.]

Witness, continuing:

The Ensign map and field notes closed—starting at the point of beginning they closed very well.

The comparative map, called the Grove map, was

766 here marked defendant's exhibit 2, and offered in evidence, which said map is in the words and figures following to wit:

[Here insert copy of defendant's exhibit 2. See **arge** roll of maps.]

Witness continuing:

I said that the Reynolds map does not correspond to the Reynolds field notes, and that can be proved in two ways. This map, defendant's exhibit 2, is drawn upon the same scale as the Reynolds map as exhibited here, and if placed upon the top of this one it would show a difference in the line, or the
767 lines could be measured and scaled upon the map.

At this point it was stipulated between the parties that the Grove map exhibited the lines of the three surveys, according to courses and distances.

Witness, continuing:

The first discrepancy in the Reynolds map is the line from the southeast corner of section 24 to the northwest corner of section 24, township one north, range 14 west. The figures give it as 480 chains upon this map. It is about 476 chains, a difference of four chains. The north line of this township is given as 476 chains and 70 links, which is just what
768 it scales. Upon the east boundary of the township one north, 15 west, and one north, 16 west, there is a difference between his field notes—between a point 20 chains and 88 links south of the southeast corner of section 24, township one north, 15 west, to its intersection with the exterior boundary, of just 5 chains, the same distance as is short between station one—station 2 of the San Fernando and station 3 of Hancock and Reynolds in their survey of that line; which makes a crossing of this map, as indicated upon this map, instead of one chain and 77 links north of the quarter section corner on the east line of section one, township 2 north, 15 west—

769 instead of one chain and 77 links north, as Mr. Reynolds calls for in his field notes, in fact, it would be one chain and 77 links less than 5 chains south of that section corner. When we come to the line 31 on the exterior boundaries, the field notes call for crossing the west boundary of township 2 north, 16 west, at a point one chain and 27 links north of a certain section corner, and from that intersection to station 31, the map and field notes call for 182 chains and 58 links. This map calls for about 170 chains, a difference of 12 chains.

The direction of the line upon this map which is
770 called south, 38 degrees west, I believe, in the patent, and in Reynolds, is about south, 36 degrees west. The lines between stations 33 and 34, as given in the patent and Reynolds, is south 12½ degrees west, platted upon this map (referring to 29), south, about 14 west, a difference in bearing of a degree and a half. The line is 203 chains in length, and makes a difference of five or six chains at the end of the line.

In the Rancho El Escorpion the lines are parallel and forms a square, both in the Reynolds and Hancock, and in the patent of the Escorpion, but the
771 south boundary of the Escorpion, as delineated upon this map, is not a right angle. It should be south, 84 degrees east, or north, 84 degrees west. There is a difference in the bearing of about 5 degrees, making a difference of several chains in that line.

Between stations 38 and 39, as delineated thereon, it shows a crossing of the Washington base line which the field notes and this map (29) purports to be at a point 133 chains and 35 links, I believe, is the distance, due west of the township line. That point due west of the township line, as shown by the figures upon this map, should intersect that line between stations 38 and 39, at a point 44 chains and

772 96 links from station 38. Upon this map, that point is indicated just 40 chains from station 38. And the lines as called for upon this map as being due east and west, instead of being that direction, runs about south, 85 degrees 17 minutes west, from the range line between the two ranges. They had to be forced in order to get together.

There are a great many other minor differences which cannot be shown very well by a scale upon the map, but placing it upon the other map would show. The average distance east and west on the western boundary of this ranch, between the line
773 run by Reynolds and the line as run by Hancock, according to his courses and distances, between stations 17 and 34, is just about half a mile. I have examined the townships and sections as laid down on the Reynolds map, and compared them with the townships and sections as laid down on the government map, and find they do not correspond. The difference is about half a mile.

A Juror: Let me ask the witness.

(In answer to questions of juror, the witness continued:)

The difference between those two lines (referring
774 to northwest boundary of the San Fernando, as shown on his map) is the difference in the surveys. On the map it is an inch and represents 47 chains.

Witness, continuing: I don't think it would be possible or reasonably possible for a person with the Reynolds map to go upon the ground and find where the boundaries are.

Cross-examination.

There was a league known as the San Fernando Protective Association in '91. I was not a member of it. In November, '94, my office was at room 17 in the Law Building.

I went upon the San Fernando in 1891 for the

775 purpose of making the survey of one boundary of it. I was there under the direction of an attorney, at the time that various parties went upon the ground for the purpose of settlement.

Don't think that I testified in the case of Lacy *vs.* Porter that I went there for the purpose of procuring places for men to settle. I was not at the trial of Lacy against Porter. I entered on to the San Fernando Ranch in the spring of '91, for the purpose of making surveys. I was paid by William B. Caldwell, who was the originator of the league. I think I was there three times prior to the trial of

776 the Hoff case. I met Mr. Hubbard—or Mr. Wright —I don't think I saw Mr. Hubbard individually—there on the San Fernando, in the fall, I think in September or October, 1891. Don't think I was ever there with Carter, one of the defendants here. I do not know any of the claims of any of these defendants. I might have known at the time that a certain section, one said he wanted that section. So far as I know I had nothing to do with their locating at all. I did point out certain sections to different persons who desired to settle. I couldn't say as to any particular man that I went out there

777 with. I was employed by the league, acting under the direction of their attorneys, Messrs. Bleeker & Pope.

I know Henry C. Vincent. I have no idea where he settled on the San Fernando. Assuming that he settled upon the place marked "Henry C. Vincent," at the point indicated upon plaintiff's exhibit 30, it would be just east of the Encino and would be inside of the San Fernando grant according to the Hancock line, as I have platted it.

Assuming that Tarbell was upon section 9 east of the Encino, he would be inside of all the exterior boundary lines of the San Fernando ranch, as I have

778 drawn them in exhibit No. 2. The same is true assuming that John J. Shore settled at the point indicated on plaintiff's exhibit 30. The same would be true as to Mosher and Cox and Edwin Carter assuming that they had settled at the places marked by their respective names on plaintiff's exhibit 30.

All of sections 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, township one north, range 15 west, would be within the exterior boundary lines of the San Fernando, as platted on the comparative map.

According to Hancock's survey, as platted by me, the distance of the nearest southern line of the
779 Rancho San Fernando to the nearest south line of the Encino would be about one mile, more correctly, 62 chains. The land at this point is rough, mountainous land. I never was at the point marked on the Hancock map as station 17, nor station 18, nor station 19, nor 20, nor 21, nor 22, nor 31, nor 32, nor was I ever at the house of Miguel Leonis, but I have been at the corner of sections 3 and 4, 33 and 34, near the Leonis house.

(Witness then marks on defendants' exhibit 2 the place at which the Leonis house would stand, by making a large letter "L", and continued:)

780 If my plat of the Hancock survey is correct, the Leonis house would be within the boundaries of the Escorpion ranch as patented. I never ran the east line of the Rancho San Fernando along the Rancho Providencia, nor along the Rancho Tejunga. The Hancock survey and the Reynolds survey practically run along the west line of the Tejunga, and I have platted Mr. Ensign's survey as running along the Tejunga Rancho, but further east and further to the north. I have never computed the difference in area between the several surveys, nor the area of the Ensign survey. I have examined the boundary

781 lines of the Rancho San Fernando only at a few stations.

In plaintiff's exhibit 30, the road marked "Los Angeles and Ventura road," which runs through the San Fernando grant, is correctly delineated.

Re-direct Examination.

This (taking up map) is plaintiff's exhibit 24 in this case and plat of township one north, range 14 west. This is a subdivision survey of the government land in township marked upon the Reynolds' map as township one north, 14 west, that part
782 extending east of the rancho. By this map there is a break in the township line on the west, but it subdivides the land in sections 31, 32, 33, 34 and 35, making a line that is not connected with a station or any station west of the west boundary of the rancho, but it purports to be 41 chains and 65 links from the southwest corner of the township, of the south boundary of the San Fernando Rancho. There is nothing upon this Reynolds map to show what the distance should be down there. It is impossible to tell whether this would fit in upon that map or not. It adopts the Reynolds course, but it does not adopt the same township and range
783 lines as delineated upon exhibit 29. This shows an error in the west line, a break there of some 3 chains, which would probably account for the discrepancy of the location of station 43.

(Witness examines plaintiff's exhibit 22 and continues:)

This is a patent map of the Rancho San Vicente y Santa Monica. This purports to be a portion of lot number 39 of township one north, 16 west, and lot 39 of township one north, 15 west, which would be the lands lying to the south of the San Fernando rancho, and between it and the township line, or the

784 San Fernando base line, between station 42 and a point 157 chains and 82 links east of station 43.

The distance, as shown by this map, between the northern boundary of the San Vicente y Santa Monica and the southern boundary of the San Fernando would be about 40 chains, at this point, but the boundaries of this map, as given in the ex-Mission, calls for identically the same distance and course as given in the patent of the Rancho San Fernando, but is in conflict with this line as shown on map, and would run to the north of the boundary line as shown on this Reynolds map, that is to say, the San
785 Vicente would lap over something like that (showing on defendant's exhibit 2), between this point, 157 chains east of station 43, which, according to the field notes of this survey, would be off in these mountains, and the southeast corner of the Rancho San Fernando there would be a strip of government land, that portion west of the government line between ranges 14 and 15 west, which has never been surveyed, and it appears by the map that there has been no connection made at station 43 by the government and the government land on the east.

(Witness examines plaintiff's exhibit 23, and con-
786 tinues):

This is a map of the tract designated as Rancho Providencia upon the Reynolds map. The difference between the patent and the Reynolds map is that it connects with the section corners of 16, 17, 20 and 21, on what is shown on this map as the offset township line, a distance of 36 chains and 9 links east of the section corner. The Reynolds map shows at 35 chains and 75 links same distance, a distance given from the station 2 of the Rancho San Fernando, on the Providencia map, and the intersection of that line, the offset township line, is 50 chains and 78

787 links. On the Reynolds map it is 51 chains and 25 links.

(Witness examines plaintiff's exhibit 27, and testifies):

This is a plat of township 3 north, range 15 west. That is the six miles square embraced within that portion of the rancho, 3 north, and 15 west. That, I believe, was taken from the same survey. There is very little difference on the north boundary. The topography upon the south boundary of that township does not agree with this at all.

(Witness examines plaintiff's exhibit 26, and tes-
788 tifies):

This is a plat of township 2 north, range 15 west, showing the exterior boundaries of the township, with only a small tract of government land lying in the northeast corner of the township. This plat—a portion designated on this map as part of the north and part of the east boundary, green, M. G. Wheeler, September 4, 1874, is a survey under the establishment of the quarter-section corner at the intersection line on the east boundary of township one north, 15 west. This map shows that the quarter-section corner was established at that time. This does
789 not fit the township as delineated on that map (the Reynolds map). They are drawn upon the same scale, and the topography will not fit.

(Witness examines plaintiff's exhibit 25, and testifies):

This is a plat of township 2 north, 16 west, showing lot number 37 in that township as a part of the ex-Mission de San Fernando. This shows upon the south boundary the distance between the San Fernando boundary, of section corner between sections 32 and 33, and on the south boundary of this township, to be 4 chains and 50 links. The Reynolds map makes it 4 chains and 93 links.

790 (Witness examines plaintiff's exhibit 28, and testifies):

This is the patent map of the Rancho El Escorpion. The Rancho El Escorpion is located upon my map half a mile west of what it is on the Reynolds map. I ascertain this by connection with the government corners, upon the map itself. This is identical with the patent of the Rancho San Fernando. That is to say, the connection between this which locates this tract of land upon the goverrment plat put it at a point north, 12½ degrees east, 21 chains, and east 25 chains, to the corner of sections 33 and
791 34, 3 and 4, and it locates the tract of land. It crosses the south boundary of township 2 north, 17 west, 25 chains west of the corner of sections 33 and 34, 3 and 4, and on the Reynolds map it crosses it at a point 15 chains and 92 links east of the corner of said sections, making a difference of 40 chains and 92 links east and west.

(Witness examines another map handed to him by counsel for the defendant, and testifies):

This is a certified copy of a township plat from the surveyor general's office of California, of township 3 north, range 16 west, San Bernardino merid-
792 ian, which is a piece of land covering township 3 north, 16 west, on this Reynolds map. It shows station 17 on this plat. That survey appears to be November 19, '75, and May 9, '74. It shows the stations 16 and 17 to be as given in the patents, south, 75½ degrees east, 194 chains. That is, they have reversed the course here 75 degrees west, 194 chains from station 16 to station 17, which would put, according to this plat, station 17 half a mile west of where it is shown upon the Reynolds map, about a quarter of a mile north. The station as shown upon this map as station 17 to be near the southeast corner of section 20, and station 17 by the

793 Reynolds map would be near the south line of section 22, somewhere in the southwest quarter. The line from station 15 to 16 is given upon this map exactly as in the patent.

(The map last referred to was here offered in evidence as defendants' exhibit 3, which said map is in the words and figures following, to wit:

[Here insert copy of defendants' exhibit 3. See small roll of maps, map No. 12.]

794 *Re-cross examination.*

Witness, at request of counsel for the plaintiff, refers to map of the Escorpion ranch, plaintiff's exhibit 21, and testifies that according to his location of the Rancho Escorpion, under the Hancock survey, the house of Miguel Leonis would be within the limits either of the San Fernando or the Escorpion, and that the patent map of the Escorpion, shows that it is outside of the exterior limits.

C. C. GROVE,

recalled on behalf of defendants, testified further as follows:

795 (Plaintiff's exhibit 24 is handed to witness, and after examination he testifies):

This is a certified copy of township plat of one north, range 14 west, and is marked plaintiff's exhibit 24 in this case. It is a subdivision of township one north, 14 west, San Bernardino Meridian. This certified copy from the surveyor general's office is a part of the report with which that map was found (referring to document subsequently offered in evidence by defendants, marked defendants' exhibit 5). Plaintiff's exhibit 24 is the township plat of township one north, range 14 west, and the south boundary along the north lines of sections 31,

796 32 and 33, is the line shown upon this map, the Reynolds map (referring to exhibit 29). It only gives the line as far as the west boundary of the township one north and 14 west, the exterior boundaries of that township that are shown upon this Reynolds map by this black line; it shows that portion of the township as shown by the Reynolds map. This diagram shows station 43 of the San Fernando and station 43 of the San Fernando as given by Hancock and as given by Reynolds to be one and the same point. The patent map shows station 43 to be a point south 28 degrees west, 111 chains from
797 quarter section corner on the west boundary of section 19, township one north, 15 west. This Reynolds map shows it to connect by that line south, 23¼ degrees west, 107 chains and 11 links from the corners of sections 19, 24, 25 and 30, on the west boundary of township one north, 15 west, making half a mile difference in the Reynolds map as it is shown here and as shown by this diagram. This diagram shows the true line south, 87 links, 680 chains, as returned by Reynolds, from this station 43 of the patent, which would be in line upon this Reynolds map something like half a mile north of
798 where it is shown by the Reynolds map, and this map shows the patent line to be south of the Reynolds line. If this report is correct, this patent line is shown to be down there (showing); assuming the Reynolds line to be correct, the patent line runs north. This report of Reynolds, you understand, shows the patent line to be south of the Hancock line—Hancock patent line. The Hancock line goes across in about that line or location (showing on map), further to the north. It would be north of the line shown upon this township plat of one north, range 14 west.

799 (The certified copy from the surveyor general's office above mentioned was here offered in evidence, marked defendants' exhibit 5, which is in the words and figures following, to wit):

(Another map handed to witness, who examines it and testifies):

This is a map of a portion of the Rancho San Fernando, Los Angeles Farming and Milling Company, filed at the request of the Farming and Milling Company, May 24th, 1880, by Chas. C. Lamb, county recorder, certified by the present county recorder, W. S. Marchant, deputy, April 4th, 1895.

800 The boundary line upon this map of the San Fernando is the same as given in the patent, that is to say, station 43, which would be in section 30, township one north, range 15 west, is given the same as it is in the patent survey, or Hancock survey, half a mile north of where it is shown upon this Reynolds map. The assessment was made by that in the sections as shown by the of the lines of the Escorpion—the sections cut over into the Escorpion as it is upon the ground. I have no idea who made the map. It is filed in the recorder's office as an assessment map. It puts the sections in different places

801 from the plaintiff's exhibit 29. This map puts it apparently from the location of the buildings half a mile east, and the Escorpion upon this exhibit is one-half a mile west of where it is shown on the Reynolds map.

The Hancock courses and distances close upon the map. I started to survey the San Fernando at one time, but was prevented from finishing it by the injunction and subsequent orders of the court. In speaking of the lines closing I meant that they were put down upon paper and that they would fit the township and range lines, but Reynolds' map would not.

802 *Cross-examination.*

Defendants offered in evidence certified copy of assessment map, filed May 24, 1880, as defendant's exhibit 6, which said map is in words and figures following, to wit:

[Here insert copy of defendant's exhibit 6. See small roll of maps. Map No. 13.]

(Witness continuing):

According to this exhibit 6, the Escorpion would
803 be located half a mile further west than it is in the Reynolds map, and the Leonis house would be within the west line of the Escorpion and would not be located as the same is located according to the Escorpion patent. And if the plat accompanying the patent of the Escorpion is correct, then this exhibit No. 6 is half a mile out of the way.

This exhibit No. 6, shows the San Fernando patent platted according to courses and distances, but the patent of the Escorpion shows the Leonis house to be west of the west patent line of the Escorpion. This exhibit 6 shows the west line of the Escorpion
804 west of the Leonis house, and the map of the patent shows it to be outside. The words of the patent does not. The patent to the Escorpion ranch, as platted by the United States, by its courses and distances, agrees exactly with the San Fernando patent, that is, the Hancock courses and distances, and both of them would include this house, whereas, the map accompanying the Escorpion, delineating the objects on the ground, excludes the house. Even according to this map, exhibit 6, these defendants Vincent, Shore, Tarbell, Mazet, Carter, Culp and Cox, if located according to the plat upon which their names are written, would all be within the patent

805 boundary, assuming that the true line running through sections 33, 34, 26, 25, 30, 29, 28, 27, 35, 36, 31, 32 and 33, lying west of the Encino, to be the Hancock survey, and assuming that the exterior lines as shown on exhibit 6, were the true lines of the Hancock survey.

Re-direct.

This map, the patent map of the Escorpion, shows the location of the common corners of sections 33 and 34, 3 and 4, referred to in the Hancock field notes, and shows that Hancock's west line crosses the south
806 boundary of township 2 north, range 17 west, 25 chains from the common corner of those sections, just the same as the Hancock field notes and map does. The Reynolds map shows the same course to be 15 chains east of the common corner of the same sections, at a distance of 182 chains and 30 links, as given by his map, but by his field notes, the south boundary of township 2 north, range 17 west, should cross at a distance of 157 chains and 99 links from station 33, being a difference of some 24 chains, that is to say, the field notes would place station 34 on this map of Reynolds, 47 chains and some links south of the township line on the south boundary
807 of township 2 north, 17 west, instead of as given on the map.

The Court: What do you mean by the field notes, courses and distances? A. Courses and distances comes in the survey.

Q. By the Court: Do they constitute all the field notes in surveying language? Suppose a surveyor should describe a road or a house or a rock, wouldn't that be a part of the field notes? A. That is a part of the field notes, but in making a survey the surveyor is supposed to commence at a point and going around the tract of land and come back to his point of beginning.

808 Q. By the Court: That is, if he don't see any objects in going around the ground? A. Whether he does or not.

Q. By the Court: Suppose in his field notes he says he runs from a given rock on the ground to a creek at a certain point or crossing of the road or creek 120 chains, now there are two objects mentioned on the ground that he has marked in his field notes; they are a part of his field notes, ain't they? A. They are a part of his field notes; yes, sir.

Q. By the Court: Suppose you would go on the
809 ground and find that was not 120 chains, but 100 between those points, then what? A. Then you would take the monument, but in this case——

Q. By the Court: Monuments control, wouldn't they? A. A monument would control, but Mr. Reynolds states that the monument is in two places upon this map and in his field notes.

Q. By the Court: Did you go to see whether they were there? A. It would be utterly impossible for it to be in two places.

Q. By the Court: He says so in his field notes? A. The field notes say so.

810 Q. By the Court: Did you go on the ground to see whether that is true? A. If his station 34 that I saw is where—is at the—is the point that he has taken, then I have been there and know that it can't be so.

Q. By the Court: Now, the courses and distances in the Hancock survey, running from say section 17 to 18 are what; take the distance, for instance, what distance would it be? A. From station 17 to 18?

Q. By the Court: Yes, sir. A. It is 26 chains and 50 links. The call at 17 is a coast survey monument. I never went to it.

Q. By the Court: Do you know whether the

811 distance from 17 to 18 would strike that coast survey monument? A. The only thing I know of that is the field notes of three different surveys, Hancock and Reynolds' agree, but Ensign does not.

Q. By the Court: From 17 to 18? A. From 17 to 18.

Q. By the Court: In distance? A. In distance and bearing. Hancock and Reynolds agree, but Ensign does not. Ensign does not agree with either Hancock or Reynolds. I never went to the coast survey. I do not know whether there are two coast surveys. I know this, that the coast survey was
812 made through there, and there was several coast surveys. I have seen the report of the different surveys.

Q. By the Court: Then it is recognized that there was a coast survey and a monument there of the coast survey? A. Yes, sir; on the Santa Susanna mountains. There is nothing in the coast survey that I could identify, nothing as that being the identical one.

Q. By the Court: You don't know whether there are two or three? A. There is numerous—I never saw any one of them, but I know from the coast sur-
813 vey there are government monuments.

Q. By the Court: Of that particular description? It seems to be a rather marked description; it is a rock in place, according to the description, not simply a loose boulder that might be moved, but seems to be a mark on the face of a rock in place, that is, a bed rock. A. Not as I understand it; it is a cut stone placed in the ground.

The Court: Some of the witnesses testified that it was a fixed rock, a rock in place, a bed rock.

Mr. Graves: Yes, and a big tin sign on top of it.

Q. By the Court: I want to know whether you are acquainted with that landmark? A. No, sir;

814 I have never been to the landmark. And I don't know whether there are two or more of that kind. The way that that is determined that it is 47 chains is by the Reynolds field notes and the Hancock field notes. The distance from station 16 to 17 by Hancock, and the direction given by Reynolds, differ. The Reynolds' station 17, according to his field notes, is 23 chains and I think 53 links south, in a southerly direction from station 17 of the Hancock survey, according to his notes. That is, according to his courses and distances, and assuming these points to be identical, or if those points are identi-
815 cal, assuming the coast survey monument to be identical, Hancock and Reynolds then run with exactly the same courses and distances until they reach the township line, which is the next permanent monument that could actually be located, and which I helped to run.

Q. By the Court: Do you know which was run first, the township line or the Hancock survey? A. The township line was run first, by Hancock himself, in 1854, located upon the ground, and the monuments of that survey are there to-day. I saw the monument. By a difference, and it is shown upon this
816 map, of 23 chains and 53 links at station 17, or the same thing would be at station 18, and assuming station 18 in both surveys to be exactly identical, the field notes of Reynolds, then by the parallel line coming down to the north boundary of township one north, range 17 west, must necessarily reach that township line at a distance of 157 chains and 99 links from station 33, which by his field notes he says he did. But his maps shows it to be at 182 chains and 30 links. It is impossible to take from the Reynolds field notes and construct this map and put the township lines upon the exterior boundaries, from the courses and distances of Reynolds.

817 The courses and distances of Hancock would fit exactly.

Re-cross examination.

The coast survey monument is at station 18, and if you ran the Hancock call 194 chains you could not reach the coast survey monument. You would go west of it half a mile and to the north 23 chains, and if you followed the other course 18 you would be half a mile away from the monument, that is, half a mile to the west of it. And if you continued to run that line half a mile to the west clear down to the Escorpion, you would take in the Leonis
818 house. The common corner of sections 33, 34, 4 and 3 is nearly due north from the Leonis house, on the ground.

There are two monuments there, one about as near as I can estimate, about 400 feet north of the other. They represent the common corners given of the sections last given. One of them is a very old stake. When I was there in '92 it didn't appear to have been disturbed for years. The other was a new stake. The common corner of those sections would be north of the Leonis house, about a quarter of a mile, and the common corner of those sections
819 is not correctly represented by the Hancock map in reference to that house. That is to say, if Mr. Hancock, as a matter of fact, ran the lines as I have platted them, by courses and distances, half a mile further to the west, then the call that we find in his patent for that common corner would not be correct. I never took the bearings from that corner to the Leonis house.

The defendants next introduced in evidence the judgment roll in the case of the Los Angeles Farming & Milling Company *vs.* Charles Noys, *et al.*, action numbered 148 in the Superior Court of Los Angeles county, state of California. Complaint

820 filed March 10, 1880. The complaint alleged that the defendants ousted the plaintiff on the first day of March, 1880. The land involved in the suit was that portion of the Rancho Ex-Mission of San Fernando in said county, described and bounded as follows: The same lying in the southerly and southwesterly portion of said rancho, and bounded by lines as follows: Commencing at the point and monument of rock on top of a high hill on the south boundary line of said ranch, said monument being known as station No. 42 of the plat of the survey of the said ranch, as surveyed March 16, 1871,
821 by W. P. Reynolds, surveyor, said point being also known as point or station No. 42 S. F. on the plat of said rancho, as delineated in the U. S. patent for said ranch; thence running north, 187 chains to a point on a line of government survey; thence east, 120 chains to a post in mound; thence south, about 187 chains to the south boundary line of said ranch; thence westerly, along said south boundary line to the place of beginning.

Service was had on three of the defendants, but no further proceedings were had in the case. The evi-
822 dence of plaintiff's witnesses, however showed that after the bringing of the suit all of the defendants left the premises.

The defendants next introduced in evidence the judgment roll in the case of Los Angeles Farming and Milling Company *vs.* Foster, *et al.*, being case No. 9614 in the Superior Court of the county of Los Angeles, state of California. Complaint filed January 22, 1889. The suit was brought to recover 2225 acres in the southwest portion of the Rancho San Fernando, being a part of the lands sued for in the present case, and embraced a triangle described by beginning at station 37 of the patent boundary of the San Fernando ranch, and then following the

823 exterior boundary of the ranch to station 41, and drawing a straight line from station 41 to the point of beginning, station 37.

The complaint alleged ouster January 2nd, 1889.

The case terminated in a judgment for the plaintiff on the 28th day of February, 1889.

The defendants next introduced in evidence the record in the case of Los Angeles Farming & Milling Company *vs* Kelsey, *et al.*, being case No. 2059 in the Superior Court of the county of Los Angeles, state of California.

The complaint in this action was filed on the 24th
824 day of January, 1883, and alleged ouster December first, 1882.

The lands involved therein were described as follows: "That portion of the Rancho San Fernando situated in the county of Los Angeles, state of California, commencing at station 42 of said rancho, according to the map of partition of said rancho; thence along the south boundary of said rancho 327 chains to station 43 of said rancho; thence northerly, 120 chains to the southern boundary of the Rancho El Encino; thence easterly and parallel with the first course above named, 327 chains to a point;
825 thence southerly, 120 chains to the point of beginning.

Summons was served on five of the defendants, and no further proceedings were had in said case. The evidence of plaintiff's witnesses showed that after bringing of the suit the defendants in said action left the premises.

The defendants then offered in evidence the decree of confirmation of the San Fernando grant, to the introduction of which the counsel for plaintiff objected, on the ground that the same was irrelevant and immaterial. Objection was sustained and defendants excepted.

826 And thereupon, the evidence being closed, the court, at the request of plaintiff's counsel, instructed the jury as follows, to wit:

[TITLE OF COURT AND CAUSE.]

The court instructs you to render a verdict in the above entitled action, in favor of the plaintiff, the Los Angeles Farming and Milling Company, and against the following named defendants, to wit: Joseph Mazet, F. M. Culp, R. J. Tarbell, I. B. Cox, Rose D. Mosher, Henry C. Vincent, John J. Shore and Edwin G. Carter, for the possession of the premises described in the complaint.

827 WALTER VAN DYKE, *Judge.*

April 6, 1895.

To the giving of which instruction defendants' counsel duly excepted.

Whereupon, defendants' counsel asked the court to instruct the jury as follows, to wit:

In the Superior Court of the county of Los Angeles, state of California.

The Los Angeles Farming and Milling Co., plaintiff, *vs.* Thompson, *et al.*, defendants.

Instructions asked for by Defendants.

828 Defendants ask the court to instruct the jury as follows:

I.

Unless the jury in this case find for all the defendants, they are instructed to render separate verdicts as to each defendant.

II.

In order to enable plaintiff to recover in this action, as against any of the defendants, it must appear from the evidence that such defendant was at the time the suit was commenced in possession of some definite portion of the land to the possession of which plaintiff was then entitled.

829 III.

This is an action of ejectment, and the plaintiff must recover, if at all, upon the strength or its own title, without regard to the strength or weakness of defendants' title.

IV.

The jury are instructed that one who enters upon land under a deed does not thereby acquire constructive possession of the entire claim, unless the deed contains definite and certain boundaries, which can be located, marked out and made known from the
830 deed.

V.

The jury are instructed that if plaintiff relies upon a constructive possession under a deed, it must show itself in the actual possession of a part of the land described therein; and the description in its deed must be definite and certain as to the boundaries of the land.

VI.

If a deed or a decree of court relied on by plaintiff as proof of constructive possession contains no definite and certain boundaries that can be traced or located on the ground, it can not have the effect to
831 extend or fix the limits of plaintiff's possession.

VII.

If you find from the evidence in this case that the description in the patent is so indefinite and uncertain that the land intended to be patented can not be located, on the ground, then you are to treat the patent as void for uncertainty and as insufficient evidence of title.

VIII.

Unless it be affirmatively shown by the evidence that the land occupied by a defendant herein is within the boundaries of the land described in and intended to be conveyed by said patent, then said

832 patent cannot furnish the basis for a recovery against such defendant in this action.

X.

Unless the jury can find from the evidence in this case, that there was an actual survey (on the ground) of the ex-Mission San Fernando grant, then all the evidence as to the exact location of such survey falls to the ground. A survey *never made* can have *no* location in fact.

XI.

The court instructs the jury that if the patent of the ex-Mission of San Fernando grant is a valid
833 patent, its boundaries are exactly the same now as they were when the patent was issued, and no subsequent survey of adjacent or neighboring grants can change the boundary lines of said ex-Mission of San Fernando grant.

XIII.

The jury are instructed that a mere constructive possession of public lands of the United States is not sufficient to prevent a qualified and *bona fide* homesteader from entering thereon in good faith for the purpose of taking up a homestead under the law of the United States.

834 XIV.

The jury are instructed that, regardless of the question as to whether or not defendants, or any of them, are qualified homesteaders, it devolves on plaintiff to show his right of recovery by proving a superior right.

XV.

It is absolutely indispensable to a recovery in ejectment that the plaintiff should prove that at the commencement of the action the defendant against whom the recovery is to be had was in possession of some portion of the land to which plaintiff establishes a right of possession.

835 XVI.

The jury are instructed that township and range lines and section and quarter-section corners established by the government are to be considered monuments, and are given much weight when referred to in connections made therewith in a government survey.

XIX.

As in cases of construing contracts generally, so in construing this United States patent, in order to find its true boundaries, the jury are to seek for the real intention of the parties to the patent. And if,
836 in view of all the evidence bearing on the question of boundary, they find it impossible to determine where the land intended to be patented is situated, they must in that event consider the patent as void for uncertainty, and cannot find for plaintiff, solely by reason of plaintiff's alleged patent title.

XXI.

If the jury should find from the evidence that some of the monuments referred to in the patent, were real monuments on the ground but that it is impossible to locate the grant by these monuments alone; and if the jury should further find it impos-
837 sible to so connect the courses and distances as given in the patent with these monuments so named therein, as to fix upon the ground the location of said grant in substantial conformity with the requirements of the patent, they should then consider the patent void for uncertainty.

XXII.

So likewise as regards the deed under which plaintiff claims to have entered and to have acquired possession; if from the evidence you should find that some of the monuments named in the deed had a real existence on the ground, and if you further find it impossible either by the monuments alone or by

838 connecting the monuments with the courses and distances as given in the deed, to locate the land intended to be conveyed in accordance with the calls of the deed; in that event you are instructed that such a deed is void, for uncertainty and insufficient to either give color of title or to extend plaintiff's constructive possession to the lands in controversy.

XXIII.

The jury are instructed that the roaming and grazing of horses or cattle does not give possession of any specific tract of land.

839 You are instructed that actual possession of land must be definite, positive, notorious and peaceable.

You are instructed that the private surveys and maps of private surveys introduced as exhibits in this case can not be considered by you for the purpose of establishing boundaries but may be considered as diagrams for the purposes of illustration only.

Each and all of which said instructions the court refused to give, and to each of which said refusals, defendants' counsel duly excepted.

840 Thereupon the jury rendered the following verdict, to wit:

[TITLE OF COURT AND CAUSE.]

We, the jury in the above entitled action, find for the plaintiff and against the following named defendants in said action, to wit: Joseph Mazet, F. M. Culp, R. J. Tarbell, I. B. Cox, Rose D. Mosher, Henry C. Vincent, John J. Shore and Edwin G. Carter, for the possession of the premises described in plaintiff's complaint.

J. G. POWELL, *Foreman.*

841 **Defendants' Assignment of Errors of Law.**

Defendants claim that the court erred.

I.

In granting plaintiff's motion to strike out those portions and each of those portions of the answers of defendants specified in plaintiff's said motion, and asked by plaintiff to be so stricken out.

II.

The court erred in sustaining plaintiff's objections
842 to defendants' offer to introduce in evidence the certified copy of the alleged grant to Eulogio de Celis, for the Rancho ex-Mission de San Fernando, and the petition of said Eulogio de Celis asking for the confirmation of said alleged grant, filed with the United States land commissioners, to wit, in case No. 378.

III.

The court erred in refusing to strike out from Lankershim's evidence the following, to wit: "I
843 held possession of the land up to the San Vicente line," the question of possession being a conclusion of law.

IV.

The court erred in its instructions to the jury directing said jury to find a verdict for plaintiff, and against the defendants as set out herein.

Said instruction was against law in this, to wit: It denied to defendants, and to each of them, the legal right to have the jury decide and render a ver-
844 dict according to their own honest convictions and best judgment upon; first, the question of plaintiff's alleged title, to the land sued for; second, the question of plaintiff's alleged possession of said land; third, the question of the alleged ousting of plaintiff from said land by said defendants, either jointly or severally; and because said instructions denied to said jury the right and duty of deciding the question of conspiracy, among the defendants,

845 and a joint ouster of plaintiff by them, as claimed by plaintiff on the trial of the case.

V.

Said instructions was against the evidence and erroneous, for the reason that it erroneously assumed, that when this action was commenced these defendants had ousted and were ousting plaintiff from all the lands and premises described in plaintiff's complaint. When, on the contrary, the
846 evidence proved that at the time said action was commenced, a portion of said land was, and for a long series of years had been, in the adverse possession of one P. Higgins. Another portion in the adverse possession of one Lovelle, and another portion in the adverse possession of one Charlie Tullis, and others, while the greater part, if not the whole of the remainder—then in the possession of any one—was in the possession of the plaintiff corporation.

VI.

847 The court erred in its refusal to give each of the instructions asked for by defendants, incorporated in this statement and numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 23.

VII.

The court erred in sustaining plaintiff's objection to the introduction in evidence, by defendants, of the decree of confirmation of the San Fernando grant, for the purpose of explaining the report and field
848 notes of the Hancock survey, and the location of said grant.

Z. MONTGOMERY & J. P. MONTGOMERY,
& R. L. HORTON,
Attorneys for Defendants above named.

The foregoing statement on motion for new trial is correct, and the same is hereby settled and allowed this 22d day of October, 1895.

WALTER VAN DYKE,
Judge of said Superior Court.

Endorsed: Filed Oct. 22, 1895.

849 [TITLE OF COURT AND CAUSE.]

ORDER DENYING MOTION FOR NEW TRIAL.

In the above entitled action the following order was made this 28 day of October, 1895:

The motion for a new trial herein is presented without argument and is by the court denied.

Attest: T. E. NEWLIN, *Clerk*,
By J. M. DUNSMOOR, *Deputy*.

850

[TITLE OF COURT AND CAUSE.]

STIPULATION.

It is hereby stipulated by counsel for plaintiff and defendants, that defendants' statement on motion for new trial herein, and plaintiff's amended statement substituted therefor by the Court, were served, filed, settled and approved in due time.

It is further stipulated that the answers of said
851 defendants Joseph Mazet, F. M. Culp, R. J. Tarbell, I. B. Cox, Henry C. Vincent, John J. Shore and Edwin G. Carter, may be omitted from the transcript on appeal, being substantially the same as that of Rose Mosher, incorporated therein.

S. M. WHITE, and
GRAVES, O'MELVENY & SHANKLAND.

Endorsed: Filed Dec. 24, 1895.

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852 [TITLE OF COURT AND CAUSE.]

NOTICE OF APPEAL.

Plaintiff's attorneys and the clerk of said court will please take notice that Joseph Mazet, F. M. Culp, R. J. Tarbell, J. B. Cox, Rose D. Mosher, Henry C. Vincent, John J. Shore, and Edwin G. Carter, defendants in the above entitled cause, hereby appeal to the Supreme Court of the state of California, from the order of the said court made

and entered herein, to wit, on October 28th, 1895, denying and overruling said defendants' motion for a new trial of said cause, and also from the whole of the judgment of the said court against them in said cause and from every part thereof.

This December 24th, 1895.

Z. MONTGOMERY,

Attorney for Appellant.

Rec'd copy this Dec. 24th, 1895. S. M. White and Graves, O'Melveny & Shankland, att'ys for respondent,

Endorsed: Filed Dec. 24, 1895.

[TITLE OF COURT AND CAUSE.]

ATTORNEYS' CERTIFICATE.

It is hereby certified by the attorneys for the plaintiff and defendants in the above entitled cause that the foregoing printed pages contain full, true and correct copies of the complaint, demurrer to complaint with ruling thereon, amendments to the complaint, amended answer of Rose D. Mosher, stipulation as to denial of amendments to complaint, verdict, judgment, statement on motion for new trial, order denying motion for new trial, stipulation omitting certain answers and notice of appeal in the said cause, as the same appear on file in the office of the county clerk, all being files and records of the said Superior Court.

It is further certified that an undertaking on appeal, in due form, was properly filed in said cause.

Dated Los Angeles, January...., 1896.

Z. MONTGOMERY,

Attorney for Defendants and Appellants.

S. M. WHITE,

GRAVES, O'MELVENY & SHANKLAND,

Attorneys for Plaintiff and Respondent.

857 [TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, T. E. Newlin, county clerk and ex officio clerk of the Superior Court, do hereby certify that the foregoing printed pages contain full, true and correct copies of the complaint, demurrer to complaint, with ruling thereon, amendments to the complaint, amended answer of Rose D. Mosher, stipulation as to denial of amendments to complaint,
858 verdict, judgment, statement on motion for new trial, order denying motion for new trial, stipulation omitting certain answers and notice of appeal in the said cause, as the same appear on file in my office, all being files and records of the said Superior Court.

It is further certified that an undertaking on appeal, in due form, was properly filed in said cause.

Witness my hand and seal of the Superior Court this 30. day of January, 1896.

859 T. E. NEWLIN, *County Clerk*,
By M. L. Miller. *Deputy*.

(seal)

SUBMISSION OF CAUSE.

IN THE

862 # SUPREME COURT

OF THE

STATE OF CALIFORNIA.

DEPARTMENT ONE.

Los Angeles Farming & Milling Company,
Respondent.
vs.
863 **C. S. Thompson,** Joseph Mazet Rose D. Mosher, F. M. Culp, Henry C. Vincent, R. J. Tarbell, John J. Shore, I. B. Cox, Edwin G. Carter,
Defendants and Appellants.

Feb. 1, 1896. Filed transcript.

[TITLE OF COURT AND CAUSE.]

864 Feb. 29, 1896. Filed appellants' points and authorities.

[TITLE OF COURT AND CAUSE.]

March 24, 1896. Filed affidavit, and respondent given 20 days to file briefs.

[TITLE OF COURT AND CAUSE.]

April 9, 1896. Filed respondent's points and authorities.

865 [TITLE OF COURT AND CAUSE.]
April ~~19,~~ 18 1896. Filed appellants' reply brief.

[TITLE OF COURT AND CAUSE.]
August 28, 1896. Filed petition for hearing in bank.

[TITLE OF COURT AND CAUSE.]
Sept. 5, 1896. Petition for hearing in bank denied. Beatty, C. J.

866

Oct 28 1896 [TITLE OF COURT AND CAUSE.]
Filed suggestion of diminution of record, granted. Cause argued and submitted.

[TITLE OF COURT AND CAUSE.]
July 22, 1897. Judgment and order affirmed. Harrison J. We concur. Temple J., Van Fleet J.

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867 [TITLE OF COURT AND CAUSE.]
August 2, 1897. Filed petition for rehearing.

[TITLE OF COURT AND CAUSE.]
August 23, 1897. Rehearing denied. The Court.

[TITLE OF COURT AND CAUSE.]

ON APPEAL FROM THE SUPERIOR COURT IN AND FOR THE COUNTY OF LOS ANGELES.

868 And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by HARRISON, J.

We concur: TEMPLE, J,
VAN FLEET, J.

Whereupon it is adjudged and decreed by the court that the judgment of the Superior Court in

869 and for the county of Los Angeles, in the above entitled cause, be and the same is hereby affirmed.

Filed July 22, 1897. Department One.

Los Angeles Farming and Milling Co., respondent, *vs.* Thompson *et al.*, appellants. L. A. No. 182.

This action was brought against a large number of defendants to recover possession of certain land in the county of Los Angeles, and to restrain the defendants from injury thereto. The land described
870 in the complaint is the south half of the Rancho ex-Mission de San Fernando, with certain exceptions, and the complaint alleges its ownership by the plaintiff, and the unlawful entry thereon and withholding of the possession by the defendants, and that they are committing injury, both temporary and permanent, to the said land. Most of the defendants suffered default, but eight of them filed answers to the complaint, upon which the cause was tried before a jury. At the close of the trial, upon the
871 motion of the plaintiff, the court directed the jury to find a verdict in its favor against these defendants. From the judgment entered thereon and from an order denying a new trial they have appealed.

At the trial the plaintiff introduced in evidence a patent from the United States to Eulogio de Celis for the Rancho ex-Mission de San Fernando, dated January 8, 1873, and showed that the grantor of the plaintiff, who had purchased an undivided half of the rancho in 1869, had, after the issuance of the
872 patent, brought a suit for a partition of the rancho, and that by the decree in that suit was awarded the tract described in the complaint.

The patent recites that in the petition of the claimant presented to the board of land commissioners he "claimed the confirmation of his title to a tract of land known by the name of Mission of San Fernando, containing fourteen square leagues, situated in the county of Los Angeles, and state of Cali-

873 fornia, said claim being founded on a Mexican deed of grant to the petitioner, made on the 17th day of June, 1846, by Pio Pico, then constitutional governor of the department of the Californias." The defendants offered to introduce in evidence the petition of Eulogio de Celis to the board of land commissioners for the confirmation of his claim to the land, together with copies of the grant from Governor Pico to him; the decree of confirmation of the claim by the board, with their opinion upon its valid-
874 ity; and stated in connection with their offer that they "proposed to prove by said petition and by such alleged grant that the petitioner did not claim said lands, or any part thereof, by virtue of any right or title derived from the Spanish or Mexican government; that they wished to prove by said documents that said grant was void, for the reason that it was an attempted grant of mission lands reserved from and not subject to grant under the laws and regu-
875 lations of the Mexican government, and that the facts stated in said petition and in said grant proved that said board had no jurisdiction over the subject matter of said case, and that the decree confirming said claim was without jurisdiction and void." Upon the objection of the plaintiff that this evidence was irrelevant, incompetent and immaterial, it was excluded by the court. This ruling is claimed by the appellants to have been erroneous, and in support of their claim they contend that the only
876 claims to land which the board of land commissioners had jurisdiction to pass upon were such as were "by virtue of any right or title derived from the Spanish or Mexican government," and that as the petition for confirmation showed that the claim was not by virtue of such right or title, the board had no jurisdiction over it, and that its decree of confirmation, as well as the patent issued thereon, were void, as being the acts of officers without authority

877 over the subject matter upon which they acted; that it appears upon the face of the petition that the board of land commissioners had no jurisdiction in the matter, for the reason that at the date of the grant the governor of California had no authority to make a sale of this land. In support of the latter proposition appellants cite the cases of United States *v.* Vallejo, 1 Black 541, and United States *v.* Workman, 1 Wall., 745. These were cases, however, in which appeals were taken by the United States
878 directly from the decree of confirmation, and were direct attacks upon the validity of the judgments appealed from, whereas the evidence offered in the present case is for the purpose of a collateral attack upon the validity of the decree of confirmation. The board of land commissioners was authorized to adjudicate upon the validity of every claim for lands in California which purported to be derived from the Spanish or Mexican government. The validity
879 of the claim included the authority of the governor to make the grant, as well as the existence or effect of the laws of Mexico concerning the same, and the jurisdiction of the board extended to the determination of each of these questions as fully as to determining whether there had been a full compliance with the forms of law in making the grant, and its judgment thereon cannot be collaterally assailed on account of any error it may have committed in reference thereto. The same question was presented
880 in Beard *v.* Federy, 3 Wall., 478, where, after the patent had been introduced in evidence by the plaintiff, the defendant produced the petition of the claimant before the board of land commissioners and insisted that it showed a want of jurisdiction in the board for the reason that it did not set forth any right or title derived from the Spanish or Mexican government; but the court said: "The board having acquired jurisdiction, the validity of the claim pre-

881 sented and whether it was entitled to confirmation were matters for it to determine, and its decision, however erroneous, cannot be collaterally assailed on the ground that it was rendered upon insufficient evidence;" and, in considering the effect of a patent, said: "By it the government declares that the claim asserted was valid under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty, and might have been located under the former government, and is cor-
882 rectly located now so as to embrace the premises as they are surveyed and described. As against the government this record, so long as it remains unvacated, is conclusive, and it is equally conclusive against parties claiming under the government by title subsequent." In More *v.* Steinbach, 127 U. S., 70, the plaintiffs claimed under a patent of the United States issued to Manuel Antonio Rodrigues de Poli, which recited the proceedings taken before
883 the land commission; the filing of a petition for the confirmation of his title to a tract of land known as the Mission of San Buena Ventura, his claim being founded upon a sale made on the 8th of June, 1846, by the then governor of the department of California; the decree of confirmation of that claim by the board of land commissioners, and its affirmance by the District Court and the Supreme Court on appeal. It was contended by the defendants that the sale to Poli of the ex-Mission of San Buena
884 Ventura was illegal and void, and that hence no title passed to the patentee on its confirmation, and United States *v.* Workman, *supra*, was cited in support of this contention; but the court said: "It does not follow that there were not exceptional circumstances with reference to the sale to Poli which authorized the governor to make it. We are bound to suppose that such was the case, in the absence of any evidence to the contrary, from the fact that the

885 validity of his claim under it was confirmed by the board of land commissioners, by the District Court of the United States and by this court on appeal. The question of its validity was thereby forever closed, except as against those who might be able to show a prior and better title to the premises."

The appellants also contend that the court erred in directing the jury to find a verdict in favor of the plaintiff. The correctness of this ruling
886 depends upon whether there was any evidence before the jury which would have authorized a different verdict. If upon the trial of an issue there is any conflict in the evidence, or if different inferences of fact may be drawn from the evidence, it is the function of the jury to determine the issue; but, if upon all the evidence in the case only one conclusion or finding can be made, it is immaterial whether the jury make that conclusion or finding by direction of the court or upon their own
887 deliberation. The verdict must be in accordance with the evidence, and cannot be given from conjecture, or at the arbitrary discretion of the jury; and, if the evidence is such that the court would be bound to set aside a verdict in favor of one party as contrary to the evidence, the matter becomes a question of law to be ruled upon by the court, and it is not required to submit the case to the arbitrament of a jury, but may direct a verdict
888 in accordance with its ruling upon the question of law.

To authorize a verdict in its favor the plaintiff was required to establish its title to the lands described in the complaint, and to show that at the commencement of the action the defendants were unlawfully in the possession of some portion thereof. The patent from the United States established the title of the patentee to the lands

889 embraced within the survey contained therein, and it was admitted at the trial that whatever title to the property described in the complaint passed from the United States by the patent had become vested in the plaintiff. The defendants sought to show at the trial that there had been no actual survey upon the ground of the tract described in the patent, and that for this reason the patent was invalid; but a patent is an instrument of too solemn a character to be disregarded by reason of evidence
890 of this character. Its issuance by the government foreclosed all collateral attack upon the regularity and sufficiency of any of the steps or proceedings upon which it depended. It was a declaration by the government, as was said in Beard *v.* Federy, *supra*, that the claim asserted "is correctly located so as to embrace the premises as they are surveyed and described." The survey set forth in the patent had been made in 1858 by Henry Hancock,
891 and in December, 1870, a re-survey of the rancho had been made by one Reynolds for the purpose of the aforesaid suit in partition. The description in the complaint is according to the Reynolds survey, and in 1892, after the commencement of the present action, the rancho was again surveyed by one Ensign, by whose testimony it was shown that the map or plat of the Reynolds survey was a correct delineation of the land described in the patent. It was shown upon the cross-examination of this
892 witness that there were certain variations in the courses and distances given in the Hancock survey from those given in the Reynolds survey, and that some of the monuments named in the Hancock survey could not be found. The defendants also introduced a "comparative map" on which had been platted the lines of the several surveys of Hancock, Reynolds and Ensign, according to the

893 courses and distances given in their field notes, and which indicated a discrepancy in a certain part of the tract of nearly half a mile in extent. From these facts they contend that Hancock did not make a survey upon the ground according to the courses and distances given in the patent, and that the discrepancy between the several surveys shows that the description of the land given in the patent is so indefinite as to render it void. Whether a particular parcel of land is within the lines of a
894 survey is a question of fact to be shown by evidence, but whether the lines of a survey which purport to describe a tract of land in a deed sufficiently defines the land to be conveyed, is to be determined by the court when the deed is offered in evidence. The field notes of a survey are not limited to the courses and distances set forth therein, but include also the monuments referred to, and all the objects mentioned by which the lines of
895 the survey can be ascertained. All of these make up a description in words by which a map or picture of the tract as it appears upon the surface of the earth may be placed upon paper and presented to the eye. If there is any discrepancy between the monuments and the courses and distances, the monuments must prevail, and, if these monuments can be ascertained, the lines connecting them will be the lines of the tract, irrespective of their variation from the lines given by the
896 courses and distances. The rancho in question contains upwards of ~~110,000~~ one hundred and sixteen thousand acres, has forty-four exterior lines of boundary, many of them several miles in length and situated in a mountainous and uncultivated region. It is not to be expected that the lines of any two surveyors in tracing these boundaries according to their courses and distances merely would exactly coincide, or that the meas-

urement and direction between the monuments would in all instances be the same. See Adair v. White, 85 Cal. 313. But the description is sufficiently definite if the entire body of field notes afford sufficient data for its location. It may be added that the lands in the possession of the defendants, and which they claimed were not within the boundaries of the lands claimed by the plaintiff, are far within the lines of the patent as shown by the plat of either of these surveys. From the evidence before the jury it could not have been found otherwise than that the tract of land described in the complaint was within the boundaries of the patent.

The possession by the defendants of a portion of the lands within the tract described in the complaint was admitted by their answers. Their denial that they unlawfully entered upon the lands, or that they unlawfully withold possession from the plaintiff, puts in issue only the character of their possession, and their affirmative allegation that they each entered upon one hundred and sixty acres of the lands claimed by the plaintiff, and that the lands so entered upon by them are within the boundaries of the land claimed by the plaintiff, but that the plaintiff has no title thereto by reason of its being outside of the boundaries of the grant which was originally confirmed to Eulogio de Celis, relieved the plaintiff from the necessity of further proof of their possession. As they did not designate the particular tracts of which they alleged that they were in possession, there was no reason for a separate verdict in reference to each defendant, but the plaintiff was entitled to a verdict for the possession of the entire tract upon showing that it had title to all the land which it claimed in the complaint. This showing, as we have seen,

901 was made by the introduction of the patent and the testimony with reference to the lines of the survey therein contained.

The judgment and order are affirmed.

HARRISON, J.

We concur:

TEMPLE, J.

VAN FLEET, J.

In the Supreme Court of the state of California.

902 Los Angeles Farming and Milling Company, respondent, *vs.* C. S. Thompson, Joseph Mazet, Rose D. Mosher, F. M. Culp, Henry C. Vincent, R. J. Tarbell, John J. Shore, I. B. Cox, Edwin G. Carter, defendants and appellants.

To the Hon. W. H. Beatty, Chief Justice of the Supreme Court of the state of California:

Your petitioners respectfully represent that on the 22nd day of July, *A. D.* 1897, a final judgment and decision was made and entered by this court in the

903 above entitled cause, then pending on appeal therein; that the action involves the validity of a certain land patent from the United States to one Eulogio de Celis for the rancho Ex-Mission de San Fernando, dated January 8, 1873, covering several leagues of land situated in Los Angeles county, state of California, of the value of several millions of dollars, and also involving the validity of a decree of the United States board of land commissioners, appointed under the act of congress of

904 March 3, 1851, entitled:

"An act to ascertain and settle the private land claims in the state of California," which said alleged decree purported to confirm the claim of said de Celis to said lands; and involving also the question of the jurisdiction of said board of said commissioners to make said decree. There was drawn in question in said action the jurisdiction of said board of land commissioners to make said decree; also the

905 validity of said decree, and the validity of said patent's base thereon, under which said patent said plaintiff claims title to the lands in controversy in this case.

Your petitioners further represent that the judgment of this court is erroneous in sustaining the decision of the trial court in holding the said patent from the United States to Eulogio de Celis, dated January 8, 1873, was conclusive of the case and cut
906 off defendants in the trial court from introducing testimony to show its validity.

The court erred in refusing to allow defendants in the trial court to introduce the petition of said de Celis before the board of land commissioners for the confirmation of his claim to the land, together with copies of the grant from Governor Pico to him, and the decree of confirmation by the board of the claim, with the opinion of the board of its validity.

907 The court erred in refusing to allow defendants to prove by such petition, and by such alleged grant, that de Celis did not claim such lands or any part thereof by virtue of any right or title derived from the Mexican or Spanish government.

The court erred in affirming the action of the trial court in instructing the jury to find a verdict for the plaintiff.

The court erred in rendering a judgment of affirm-
908 ance of the judgment and order of the trial court in favor of the plaintiff when it should have rendered a judgment of reversal in favor of the defendants in that court. Reference is hereby made to the record of said case for further particulars bearing on this petition and these assignments of error.

WHEREFORE, your petitioners pray for the allowance of a writ of error from the Supreme Court of the United States to this court, and for such other

process as will enable your petitioner to obtain a
909 and further review of the case and a correction of said errors by the said Supreme Court of the United States, and your petitioners will ever pray.

Z. MONTGOMERY and
GARLAND & WRIGHT,
Attorneys for Petitioners and Appellants.

Endorsed: Filed April 27, 1899. Geo. W. Root, clerk, by W. M. Ward, deputy.

United States of America, ss.

910 *The President of the United States of America to the Honorable, the Judges of the Supreme Court of the state of California, greeting:*

Because the record and proceedings, as also in the rendition of the judgment of plea which is in the said Supreme Court of the state of California, before you or some of you, being the highest court of law or equity in said state in which a decision could be had in the suit between the Los Angeles Farming and Milling Company, plaintiff, and C. S.
911 Thompson, Joseph Mazet, Rose D. Mosher, F. M. Culp, Henry C. Vincent, R. J. Tarbell, John J. Shore, I. B. Cox, Edwin G. Carter, defendants, wherein was drawn in question the validity of a treaty or statute of, or in authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said statute, on the ground of their being repugnant to the constitution, treaties or laws of the
912 United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission, manifest error hath happened to the great damage of said C.

913 S. Thompson, Joseph Mazet, Rose D. Mosher, F. M. Culp, Henry C. Vincent, R. J. Tarbell, John J. Shore, I. B. Cox, Edwin G. Carter, as by their complaint appears. We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
914 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done there to correct that error, what of right, and according to the laws and customs of the United States, should be done.

915 Witness the Hon. Melville W. Fuller, chief justice of the said Supreme Court, the 27th day of April, 1899.

Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the southern district of California, by E. H. Owen, deputy clerk.

The above writ of error is hereby allowed. W. H. Beatty, chief justice of the state of California.

Endorsed: L. A. 182. Supreme Court of the United States. C. S. Thompson *et al.*, plaintiffs in
916 error, *v.* Los Angeles Farming & Milling Co., defendants in error. Writ of error. Filed April 29, 1899. Geo. W. Root, clerk, by W. M. Ward, deputy.

United States of America, ss.

To the Los Angeles Farming and Milling Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States

917 to be held at the city of Washington, in the District of Columbia, on the second Monday of October, *A. D.*, 1899, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the state of California, wherein C. S. Thompson, *et al.*, are plaintiffs and you are defendant in error, to show cause, if any you can, why the judgment rendered in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

918 Witness the Hon. W. H. Beatty, Chief Justice of the Supreme Court of California, this 27th day of April, *A. D.*, 1899, and of the independence of the United States the one hundred and twenty-third.

W. H. BEATTY
Chief Justice of California.

Endorsed: L. A. 182. Supreme Court of the United States, C. S. Thompson *et al.*, plaintiffs in error *v.* Los Angeles Farming and Milling Co., 919 defendants in error. Citation. Filed April 27, 1899. Geo. W. Root, clerk, by W. M. Ward, deputy. Received copy this April 29, 1899.

WHITE & MONROE,
Attys. for Respondents.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, Geo. W. Root, clerk of the Supreme Court of the state of California, do hereby certify that the 920 foregoing printed pages, numbered from 1 to 302 both numbers inclusive, contain a full, true and correct transcript of the proceedings in the cause above entitled, and the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of the said Supreme Court this 16 day of ~~May, 1~~ June, 1899

GEO. W. ROOT, *Clerk*,
By C. G. Simpson, *Deputy.*

11031

IN THE

SUPREME COURT

OF THE

United States

On Writ of Error from the Supreme Court of the State of California.

C. S. Thompson et al.,
Plaintiffs in Error,

vs.

The Los Angeles Farming and Milling Company,
Defendant in Error.

This is an action in which the Los Angeles Farming and Milling Company, a corporation, seeks to recover a large tract, of land consisting of a part of the ex-Mission of San Fernando, situated in the county of Los Angeles, state of California, basing its original claim of title upon an alleged Mexican grant, claimed to have been made by Pio Pico, governor of California, to one Eulogio de Celis, under whom said corporation claims title. Said alleged grant bears date June 17, 1846. The case was tried by a jury.

On the trial in the trial court, said corporation plaintiff in said court, in support of its claim of title, introduced in evidence a document which on its face purported to be a United States patent, conveying to said de Celis said ex-Mission lands,

embracing, as it was claimed, the premises in controversy, and also introduced certain *mesne* conveyances connecting said corporation plaintiff with said title.

After said corporation plaintiff had rested its case, the defendants (now plaintiffs in error) offered in evidence the petition of said Eulogio de Celis, presented to the board of United States land commissioners authorized to ascertain and settle private land claims in California, which said petition will be found at pages 233-4 of the record; and also offered in evidence the said alleged grant. [See page 235 record.] Also offered in evidence the decision of confirmation by the board [see record pages 238-9] for the purpose of proving that said claim of said de Celis was not "*a claim to lands in California by virtue of any rights or title derived from the Spanish or Mexican governments;*" and that therefore the said board of land commissioners had no jurisdiction over the case presented by said petition. But to the introduction of each of said documents, opposing counsel, representing said corporation plaintiff, objected on the ground that said documents and each of them were incompetent, irrelevant and immaterial as evidence in the case. The court held that the patent was conclusive and sustained said objections to each of said documents, to which ruling of the court the defendants excepted; and on appeal to the Supreme Court of the state of California the said action of the court below was by said Supreme Court sustained; and from said last named court said case comes to this court on writ of error, granted by the chief justice of said state.

11032

Assignment of Errors.

Plaintiffs in error assign the following as errors, for which a reversal of the decision of the California state Supreme Court is asked, to wit:

I.

The court erred in holding that the patent from the United States to Eulogio de Celis, dated January 8, 1873, was conclusive of the case, and cut off defendants in the trial court from introducing testimony to show its invalidity.

II.

The court erred in refusing to allow defendants in the trial court to introduce the petition of said de Celis before the board of land commissioners for the confirmation of his claim to the land, together with copies of the grant from Governor Pico to him, and the decision of confirmation by the board.

III.

The court erred in refusing to allow defendants to prove by said petition and by said alleged grant that de Celis did not claim said lands, or any part thereof, by virtue of any right or title derived from the Spanish or Mexican government. Said petition, grant and decision of the board being substantially as follows, to wit:

Petition.

"Before the commissioners to ascertain and settle private land claims in the state of California.

"Eulogio de Celis gives notice that he claims a tract of land situated in the present county of Los Angeles, known by the name of Mission of San Fernando, bounded as follows: On the north by the rancho of San Francisco, on the west by the mountains of Santa Susanna, on the east by the rancho of Miguel Triumfo, and on the south by the mountains of Portesuelo, which tract is supposed to contain fourteen square leagues.

"Said land was sold to said Celis by a deed of grant dated the seventeenth day of June of the year eighteen hundred and forty-six, by Pio Pico, constitutional governor of the Californias thereto, duly authorized by the supreme government of the nation and by a decree of the departmental assembly of April third, eighteen hundred and forty-six; said sale was made for the sum of fourteen thousand dollars, which was paid by the said Celis to the said Pio Pico, who acknowledged the receipt thereof, as will more fully appear by reference to the aforesaid deed of grant, copy whereof marked A is hereto annexed.

"Claimant avers that the aforesaid deed of sale contains the condition that the government of Mexico shall have the right to annul the contract by reimbursing to this claimant the aforesaid sum of fourteen thousand dollars, with the current rates of interest, and in case said sum is not reimbursed within said eight months, said Mission of San Fernando shall be his in full property. And this claimant avers that said sum of fourteen thousand dollars was never reimbursed to him by the Mexican government, or by any person whatsoever.

"Said Mission of San Fernando was leased by the government of Mexico to Andres Pico in December, 1845, for term of ———years, which lessee has been in the occupancy of the said property up to the present date.

"Claimant further avers that he knows of no other claim to the aforesaid mission, and he relies on the documents above referred to and witnesses he shall produce to substantiate his claim.

N. HUBART,

"Attorney for Caimant."

11033

Grant.

"The undersigned constitutional governor of the department of the Californias, in virtue of the powers vested unto him by the supreme government of the nation, and in virtue of a decree of the honorable departmental assembly of April third of the present year, to raise means for the purpose of maintaining the integrity of the territory of this department. For the sum of fourteen thousand dollars, which he receives, sells unto Don Eulogio de Celis and his heirs, ex-Mission of San Fernando with all *its* properties, estates, lands and movables with the exception of the church and all its appurtenances which remains for public use. Said purchaser obligating himself to maintain on their lands the old Indians on the premises during their lifetime with the right to make their crops, with the only condition that they shall not have the right to sell the lands they cultivate and any other which they possess without anterior title from the departmental government, for all of wh[illegible]he aforesaid Senor Celis shall be acknowledged as the legitimate owner of the aforesaid ex-Mission of San Fernando, to use the same as to him shall seem best, guaranteeing unto him as this government does guarantee, that he is well possessed of the aforesaid estate with all the prerogatives granted by law to purchasers, with the only condition that the above mentioned purchaser shall not take possession within the space of eight months from the date hereof, within which delay the government shall have the right to annul this contract by reimbursing to the aforesaid Senor Celis the sum of fourteen thousand dollars with interest at the current commercial rates, but if this reimbursement is not operated within the aforesaid eight months, this sale shall be valid.

"The above mentioned purchaser binds himself to warrant to the father minister of the aforesaid establishment his subsistence and clothing with all possible decency, together with the rooms assigned to him or those which he justly requires.

"And for the establishment of this fact and the security of the purchaser, the present document is issued and shall be acknowledged and respected by all the authorities of the department for its better accomplishment.

"And in faith of which the undersigned and secretary of the department grant their authority and affix their signatures in the city of Los Angeles on this ordinary paper for want of stamped paper, the seventeenth of June, one thousand eight hundred and forty-six. PIO PICO.

"JOSE MATIAS MORENO,

"*Secretary pro tem.*"

Decision.

"Eulogio de Celis *v.* The United States.

"For the ex-Mission of San Fernando in the county of Los Angeles containing about thirteen square leagues.

"This claim is based upon a grant issued to the claimant by Governor Pio Pico on the 17th day of June, 1846.

"The grant purports to have been made in consideration of the payment of the sum of fourteen thousand dollars in money. Pio Pico testifies that he executed the grant at the date that the same bears, and that it was made under special instructions of his government for the purpose of raising the necessary funds to enable the department to prepare for a defense against the attack of the Americans and that the sum of fourteen thousand dollars was actually received by him from the grantee in consideration thereof and that the funds were used by him for the benefit of the nation in the defense of the same. The genuinness of the grant is clearly established and the circumstances under which it was made so clearly explained as to leave no doubt but it was done in good faith.

The grant contains a clause reserving the right of the government to annull the same at any time within eight months from the date thereof by refunding to the grantee the consideration money, together with the usual rate of interest thereon, which rate, if the transaction had been between individuals changed the nature of the grant to that of a mortgage. But to apply the doctrine in this case would be in effect to compel the grantee to remain a mortgagee without power to foreclose the mortgage against the government, in as much as the government stands upon its sovereignty not acknowledging the rights of individuals to have their actions at law against it, only in cases where provisions are made by special statute.

We think the petitioner *in* this case is entitled to a confirmation and a decree will be entered accordingly.

(Confirmed.)

(Endorsed.) No. 378. Eulogio de Celis, ex-Mission of San Fernando. Opinion of the board delivered by commissioner S. B. Farwell. Filed in office July 3rd, 1855, Geo. Fisher, Secretary. Recorded in record of decisions Vol. 3, page 102. Geo. Fisher, Secy." For full copies of these documents, see record, page 233 and following.

IV.

The court also erred in affirming the action of the trial court in instructing the jury as follows:

"The court instructs you to render a verdict in the above entitled action in favor of the plaintiff, the Los Angeles Farming and Milling Company, and against the following named defendants, to wit: Joseph Mazet, F. M. Culp, R. J. Tarbell, I. B. Cox, Rose D. Mosher, Henry C. Vincent, John J. Shore, and Edwin C. Carter, for the possession of the premises described in the complaint.

WALTER VAN DYKE, *Judge.*

April 6th, 1895.

v.

The court erred in rendering a judgment of affirmance of the judgment of the trial court in favor of plaintiff, when it should have rendered a judgment of reversal in favor of defendants in said court. Plaintiffs in error contend;

First. That this sale or alleged grant is absolutely void, for the want of power in the governor to make it; and secondly; that, because of the fact that the void nature of the grant was set out and appeared on the face of the claimant's petition asking for its confirmation by the board of land commissioners; in other words; because the claimant's petition revealed facts which showed that he did not claim the lands asked for, "by *virtue of any right or title derived from the Spanish or Mexican government,*" said petition thus showed on its face that petitioner's claim was one, over which the board had no jurisdiction.

Section 8 of the act of Congress of 1851, creating said board of land commissioners, and fixing and limiting its jurisdiction, provides:

"That each and every person claiming lands in California "*by virtue of any right or title derived from the Spanish or Mexi-*"*can government, (italics mine)* shall present the same to said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claim; and it shall be the duty of the commissioners when the case is ready for hearing, to proceed promptly to examine the same upon such evidence and upon the evidence produced in behalf of the United States, and to decideupon the validity of the said claims."

In the case of Beard *v.* Federy (reported in 3rd Wallace p. 479,) this honorable court placed a judicial construction upon that portion of the above quoted section of the act, creating said board, which fixes its jurisdiction, and limits it to claims, which show "*a right or title derived from the Spanish or Mexican government.*" In that case, it is true, that this court sustained

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the jurisdiction of the board, but it only did so for the reason that the claimant's petition—as the court holds—*did show a right or title derived from the Spanish or Mexican government.*

In the case just cited, after carefully considering the allegation of the claimants petition, asking for the confirmation of his claim, this court said:

"These averments clearly present a case within the juris-"diction of the board of commissioners. They show a claim by "virtue of a right or title derived from the Spanish or Mexican "government, which is all that is required by the act of 1851."

But if in the said case, of Beard *v.* Federy, this court had been confronted with such a petition as that of de Celis, namely, a petition which—as we shall presently prove—according to the repeated decisions of this court—showed *no "right or title derived from the Spanish or Mexican government,"* the court would necessarily have been compelled to hold that the board had *no* jurisdiction over the claim presented, and therefore, that its decree of confirmation was a mere nullity, and utterly void.

But am I correct in asserting that according to the decisions of this court, the allegations of facts set out in the petition of Eulogio de Celis, asking for the confirmation of his claim, failed to show *"any right or title derived from the Spanish or Mexican government?"*

In the case of the United States *v.* Vallejo, I. Black 541, in passing upon an attempted sale of land by Governor Pico, made about the same time and for the same alleged purpose of raising money to defend the country against the American forces, this court said:

"The main objection to this grant is the want of power in the governor to make it." And after thoroughly considering and discussing the question, this court holds that Governor Pico had no power to sell the public lands of Mexico; and on that ground decided that Vallejo had no right or title to the lands he claimed.

Then again, in the case of the United States *v.* Workman, 1 Wallace p. 745, this court said:

"The governor of California had no power on the 8th day of June, 1846, either under the colonization laws of August 12, and the regulations of November 1, 1828, nor yet under the dispatch of March 10, 1846, from the minister of war; nor under the proclamation of Mariano Paredes Y. Sprillago, president *ad interim* of the Mexican republic, dated March 13, 1846—these two last being made in anticipation of the invasion of California by the forces of the United States; nor under any other authority, to make a valid sale and grant of the Mission of San Gabriel in California."

If, then, Governor Pico had no power to sell the public lands to Vallejo, and no power to sell the San Gabriel Mission lands to Workman, whence did he derive his power to sell the San Fernando Mission lands to de Celis? Upon the authority of these two decisions last cited there would seem to be no escape from the conclusion that this sale by Pio Pico to de Celis constituted no claim *"by virtue of a right or title derived from the Spanish or Mexican government,"* and was as utterly void as if it had been made by the king of Dahoma or the emperor of China.

And yet, void as it was, it must be frankly conceded that if the board of land commissioners had *jurisdiction* over the case, its decision confirming the claim cannot now be assailed by these defendants.

Hence, if de Celis in his petition had even falsely alleged facts sufficient to show a *title derived from the Spanish or Mexican government*, his decree of confirmation and his patent would now stand beyond the reach of successful attack on the ground above specified.

" *The subject matter of jurisdiction is to be found in the alle-*
" *gations of the litigants, and not to be ascertained outside of them.*
" *If the complaint filed presents a case entitling the plaintiff to the*

"*action of the court, then there is a subject matter, though no evi-*
"*dence can be adduced to support any of the allegations in the com-*
"*plaint.*"

17 American State Reports 143.

It is true that the United States District Court on appeal affirmed the decision of the board of commissioners in this case, but it is settled law that where a lower tribunal has no jurisdiction "it necessarily follows that the appellate court could not "acquire any by appeal."

See Levy *v.* Shurman, 42 American Decisions 692.

Neither could the issuance of a United States patent, based on a void decree of confirmation, have any more validity than the void decree upon which it rested for its foundation.

"*Judgments rendered without jurisdiction are void.*"

13 American State Reports 220;

11 American State Reports 808, and numerous authorities there cited.

And "*all proceedings based on a void judgment are absolutely* "*void, irrespective of bona fides.*"

See Great American Mining Co. *v.* Woodman etc. Mining Co., 12 Colorado 46;

Also, 13 American State Reports 204.

In fact these principles seem so elementary that it almost looks like a contempt of court to cite authorities in their support.

The legal propositions, upon which we rely for the reversal of the decision of the California Supreme Court, seem so self evident when considered in the light of the decisions of this court in the two cases above cited (namely, the Vallejo case and the Workman case) that argument would seem hardly necessary. And I should probably have curtailed this brief to one half its length but for the fact—judging from the nature of the opinion delivered by the California Supreme Court in this case—that I had failed to make myself understood by the learned author of that

opinion. My position in that court—just as it is in this—was that the decree confirming the de Celis claim was *absolutely void* and an *utter nullity* for want of jurisdiction. And in order to maintain that position it was necessary to establish two propositions, namely: *First*, that the alleged grant by Pio Pico to de Celic was *void;* and *secondly*, that the *facts* showing the void character of that so-called grant appeared in the *petition* asking for its confirmation. In order to establish the first of these propositions we cited the said cases of Vallejo *v.* The United States and Workman *v.* United States, holding that the California governor had no power to sell these lands, and that his sales were mere nullities.

Now, one of the errors that we complain of is that the trial court refused to allow us to prove by the introduction of the grant itself that it *was a void grant;* and another error is, the refusing to allow us to prove, by the introduction of the petition of de Celis asking for confirmation of his alleged grant, that said petition showed on its face the void character of his grant; and that it showed no right or title derived from the Spanish or Mexican government, and consequently showed no jurisdiction in the board to try the case.

As an evidence of the fact that we utterly failed to make our real position understood by the learned judge who prepared the decision of the California Supreme Court in this case, attention is called to the following quotation from that decision, where the court says:

"Appellants cite the cases of United States *v.* Vallejo, 1 " Black 541, and United States *v.* Workman, 1 Wallace 745.

" These were cases, however, in which appeals were taken " by the United States directly from the decree of confirmation, " and were direct attacks upon the validity of the judgments " appealed from; whereas the evidence offered in the present " case is for the purpose of a collateral attack upon the validity " of the decree of confirmation."

Now our citation of the said cases of United States *v.* Vallejo and United States *v.* Workman were not cited for the purpose of showing in *themselves* that we had a right to attack collatterally a *judgment* that *was* a *judgment*, but for the purpose of showing, in *connection with the de Celis petition*, that the de Celis claim was one over which the board had no jurisdiction, and consequently that its so-called judgment was *not* a *judgment* but a *nullity*. And if a *nullity* it was open to attack collaterally. A void thing is nothing.

In the case of Doolan *v.* Carr, reported in 125 U. S. p. 618, this court held:

"That it is a clear distinction established by law, and it has "been often asserted by this court, that even a patent from the "government of the United States, issued with all the forms of "law, may be shown to be void by extrinsic evidence, if it be "such evidence as by its nature is capable of showing a want of "authority for its issue."

Again (same case):

"Where a court has jurisdiction, it has a right to decide "every question which occurs in the cause; and whether its "decision be correct or otherwise, its judgment, until reversed, "is regarded as binding in every other court. But if it act "without authority, its judgment and orders are regarded as "nullities. They are not *voidable*, but simply *void*."

And in support of this position the court cites an overwhelming array of authorities.

The California Supreme Court, in deciding this case, cites in support of its decision the above quoted case of Beard *v.* Federy, in which this court, when referring to the claimant's petition for confirmation of his grant, said:

"These averments clearly present a case within the juris- "diction of the board of commissioners. They show a claim by "virtue of a right or title derived from the Spanish or Mexican "government, which is all that is required by the act of 1851."

But while it is true that in the case of Beard *v.* Federy the claimant's petition did undoubtedly, in the language of this court, "present a case within the jurisdiction of the board by *showing* "*a claim by virtue of a right or title derived from the Spanish or* "*Mexican government,*" how is it possible for that decision to be used as authority to sustain the jurisdiction of the board in a totally different sort of case, like the one at bar, where, as the court will see, the averments of the claimant's petition, instead of showing "*a right or* "*title derived from the Spanish or Mexican government,*" show just exactly the contrary?

In deciding this case the state court quotes that part of this court's decision in the Beard *v.* Federy case, which says:

"The board *having acquired jurisdiction*, the validity of the "claim presented and whether it was entitled to confirmation, "were matters for it to determine, and its decision, however "erroneous, cannot be collaterally assailed on the ground that "it was rendered on insufficient evidence."

Undoubtedly such is the law, but the mere fact that Mr. Justice Harrison cites this law in answer to our contention only proves that we failed to make our contention understood. To repeat: We fully concede, and have always conceded for the purposes of this case, that *if* the board of land commissioners had jurisdiction over the subject matter of the de Celis claim, its decree of confirmation cannot be collaterally attacked. But we maintain, just as this court held in the said case of Beard *v.* Federy, that in order to give said board jurisdiction the "averments of the claimant's petition," in the language of the act creating said board, and in the language of this court in said Beard *v.* Federy case, must show:

"A claim by virtue of a right or title derived from the Spanish or Mexican government."

And we reasserverate our contention that the petition of the claimant, de Celis, not only fails to show "*a claim by virtue of a right or title derived from the Spanish government,*" but sets out a

state of facts which, in the light of at last two decisions of this court, conclusively show that his claim was *not by virtue of any right or title derived from the Spanish or Mexican government*" because as above stated, it shows, as the basis and the only basis of the claim, a pretended sale by Governor Pico, such as this court has said the governor had no power to make.

As further proof that we must have failed to make our contention understood by the California Supreme Court in this case is the fact that in its decision the court cites as authority against us the case of More *v.* Steinback, 127 U. S. 70.

The difference between the question decided in the More *v.* Steinback case, and the question now under consideration is just exactly the difference between the erroneous decision of a court acting *with* jurisdiction and the erroneous decision of a court acting *without* jurisdiction. A careful study of the More *v.* Steinback case and of the elaborate brief of appellant's counsel will show that the question of the jurisdiction of the land commissioners was not in that case either raised by counsel or decided by the court. It is true that in the case just named it was contended by appellant's counsel that the sale of certain lands by Governor Pico to one Poli was void for the want of power to make the grant or sale, and on that ground he contended that the patent based thereon should be rejected. But in *that case*, no proof was either given or offered in the trial court, to show a want of jurisdiction in the board. And this court, assuming the jurisdiction of the board of land commissioners to confirm the claim (as it might well do in the absence of any showing to the contrary), said:

"But it does not follow that there were not exceptional cir-
"cumstances with reference to the sale to Poli which authorized
"the governor to make it (the grant). We are bound to suppose
"that such was the case *in the absence of any evidence* to the contrary," etc. And the court adds:

"The question of its validity was thereby forever closed "except as against those who might be able to show a prior and "better right to the premises."

And taking for granted—as it had to do—the jurisdiction of the board of commissioners that confirmed the Poli claim the court could reach no other conclusion. But the very thing which this court was compelled to assume in the case of the Poli claim (namely, the jurisdiction of the land commissioners,) for the want of *evidence to the contrary*; is the thing which in this case we offered to prove in thecourt below *did not exist:* but we were denied that privilege, and this denial we insist was error.

There is in fact, a double reason why this particular grant was void. First, it was void because it was an attempted sale; and secondly, it was void because it was an attempt to alienate mission lands, which under the Mexican law the governor had no power to do. And furthermore, the act of Congress creating the board of land commissioners gave that board no jurisdiction over mission lands except for one specific purpose. Congress being fully advised as to the Mexican law, denying the governor the power to grant mission lands provided by section 16 of the act creating said board.

"That it shall be the duty of the commissioners herein provided for to ascertain and report to the secretary of the interior the tenure by which the mission lands are held; and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by pueblos or rancheros Indians."

Here is a specific and clearly defined and limited duty, pointed out to the board by the very law of its creation with reference to these mission lands. Congress knowing that they had not been and could not under the Mexican law be granted, and knowing too that the civilized Indians were occupants and cultivators of these mission lands, evidently intended to treat at least that much of California's domain as government property,

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subject to certain rights of the occupants. Hence it was that the whole matter was relegated to the secretary of the interior, who, under the law, was and still is charged with the duty of supervising and managing and protecting the public domain.

Undoubtedly the reason for requiring the board to "ascertain and report to the secretary the tenure by which the mission lands were held" was to enable him to deal justly with the occupants, and to recommend such legislation as might be deemed necessary for the protection of these Indians, the tenants and wards of the government.

In thus prescribing by law the action that the commissioners should take with reference to mission lands—under the universally recognized maxim, "*Expressio unius exclusio alterius*"—the board was as effectually prohibited from taking any other action with reference to these mission lands as if Congress had in terms forbidden it to do so.

Viewing the matter as we do it seems to us that (if we are correct in our position that in confirming the de Celis claim the land commissioners acted without jurisdiction) the demoralizing results of a final decision of our highest court giving sanction to such an unauthorized, illegal and void act, involving as it does the title to millions of dollars' worth of property would tend not a little to imperil that high respect and abiding confidence that a law-loving people ought to be able to repose in their supreme judiciary.

The great and paramount objection to a mob court is that even when it decides justly it acts without jurisdiction.

But is it not still worse, and far more demoralizing, for a legally organized court, such as the U. S. board of land commissioners to try and decide an important case without jurisdiction and against the law?

And can it be in the interest of law and good government for these lawless and unjurisdictional acts to be now sustained by the courts?

The law should certainly deal out even handed justice to the great and small, the rich and the poor alike; and hence while the government, with commendable zeal, through its land department and its courts, takes special care, that no individual homestead settler shall take from the public domain so much as a 10-acre tract of land in violation of law; it would indeed look like a travesty on justice to allow a wealthy corporation in defiance of law to hold so magnificient a tract of government land as that involved in this suit.

There are other reasons why plaintiffs in error think the decision of the Supreme Court of California ought to be reversed, which reasons will be more fully and ably presented by the Washington city counsel with whom I am associated.*

Z. MONTGOMERY,

One of the Counsel for Plaintiffs in Error.

*Although I conducted this suit in the Supreme Court of California, and procured the writ of error, it was not until a very late date that I was retained to assist in its presentation in the United States Supreme Court. Hence I have had no opportunity to confer with the Washington counsel, and shall leave its chief management in their hands. Z. M.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

C. S. THOMPSON ET AL.,
PLAINTIFFS IN ERROR,

v.

LOS ANGELES FARMING AND MILLING COMPANY,
DEFENDANT IN ERROR.

No. 87.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

Counsel for defendant in error in this case have filed two briefs, the first quite lengthy and the second quite short. The reason for the great length of the first seems to be found in the fact (stated therein) that they had not seen a copy of our opening brief, and consequently they proceeded to debate about all the questions presented in the trial court, including even the question of their client's alleged prior possession of the land in controversy. But this question—it is fair to presume—is one which, for several sufficient reasons, this Court will not consider.

First. Because it is not a Federal question.

Secondly. Because it is a question of fact, and not of law, and this case comes here on writ of error, and not on appeal.

Thirdly. Because said question was neither considered nor passed upon by the California Supreme Court; and

Fourthly. Because this question is not presented in the assignment of errors. If, contrary to our expectations, this Court should think proper to go outside of our assignment of errors, and outside of the points decided by the California Supreme Court, and look into the volume of testimony embraced in this record, in order to inquire into the character of the possession of the defendant in error of this immense tract of land, it would find that its possession was a mere scrambling possession, almost incessantly interrupted by individual settlers, who, like everybody else, were perfectly satisfied that, under the decisions of this Court, these lands were in fact Government property. It is true, as the evidence shows, that these individual settlers, as a rule, did not long maintain their possession, for the reason that they preferred to abandon their little settlements, rather than squander their slender means in endless litigation against a powerful corporation with unlimited resources at its back. As one of these settlers remarked when on the witness stand, he "might just as well have undertaken to wrestle with a mountain as with this corporation."

Counsel have also discussed the question of the survey of the alleged grant. But if, as we maintain is the case, the decree of confirmation is a nullity for want of jurisdiction in the Board of Land Commissioners, then both the survey and the patent must fall with the decree, just as the branches of a tree must fall with the trunk.

WAS THE DE CELIS CLAIM EVER ACTUALLY SURVEYED?

But even if the alleged decree of confirmation were not a nullity for want of jurisdiction to make it, as we maintain it was, still we contend that the patent in this case is void (not because of an *erroneous* survey but) for the reason that there was actually *no* survey of this claim ever made on the ground, as required by the 13th section of the act of Congress of March 3, 1851, entitled "An Act to ascertain and settle private land claims in the State of California." On the trial of this case there was much evidence tending strongly to show that no survey was ever actually made of this claim. Henry Hancock, Deputy U. S. Surveyor, who claims to have made this survey, had himself previously made a Government survey embracing the same lands, running and marking the township and range lines; and the evidence tends overwhelmingly to show that, instead of surveying the de Celis claim on the ground, he simply sat in his office and platted this claim, adapting his courses and distances, as best he could, to the lines he himself had previously run in making the Government survey. In doing this he had necessarily as a rule either to leave his new lines without any monuments to mark them, or else he had to assume the existence of certain natural or artificial monuments that did not exist. Hence it was that no surveyor has ever been able to locate by monuments on the ground the so-called patent survey. After a large sum of money had been expended in making what is known in the record as the Reynolds survey for the purpose of locating the lines of the alleged patent survey, these defendants in error subsequently, at a cost of four thousand dollars (see folio 520), employed one C. A. Ensign to try his hand at the same impossible

job. As an evidence of the non-existence of certain of the natural monuments named in the so-called patent survey, witness Ensign who made this four thousand dollar effort, testifying for defendant in error, when referring to certain trees named as monuments in this alleged survey, said:

"There are two or more trees given. We would expect to find some remains of it, either stumps or trees, but in that case we could find nothing but the situation at the bank of the creek." (See Record, 150.) And for much more of the same sort, see Record, 151, 152.

Again, turning to Record, page 244, we find that part of Surveyor Hancock's report where he describes the line running from Station 16 to Station 17, as follows: "Thence north 75½° W. 134 chains to Station 17, and marked an oak tree 20 inches diameter on the mountains, S. F. 17." But Reynolds in his report says that he could find no tree at the point indicated to correspond with that mentioned by Hancock, * * * and he finally selected and marked a tree as Hancock's corner which lacked 5¼° of being upon Hancock's bearing, and fell forty chains or about half a mile short of the location assigned by Hancock as that of his Station 17. (See Record, page 88.) But Surveyor Hancock, in making his descriptive map upon which the alleged patent is based, evidently adhered to his imaginary tree without any reference to that real tree half a mile away, and on an entirely different bearing, afterwards found and marked by Reynolds, and subsequently adopted by Ensign, as Hancock's Station 17. As proof positive of this fact, turning to Record, pages 244, 245, (folios 725, 726, 727, 728,) we find that the Hancock description, after running from said Station 17 to Station 34, "intersected the south boundary of township No. 2, north of the base line of range No. 17 W. of San Bernardino meridian, 25 chains *west* of corner of sections 3, 4, 33,

34 to a live oak," etc. But while the Hancock line, running from his imaginary tree at Station 17, down to and across the south boundary of township No. 2 * * * 25 chains *west* of the common corner of sections 3, 4, 33, 34, both Reynolds and Ensign, running from their newly found tree at their assumed Station 17, following substantially the same courses and distances as the Hancock description, down to the same south boundary of township 2, intersect that boundary (not 25 chains *west*, but) 15.92 chains east, of the said common corner of sections 3, 4, 33, 34; see Record, page 162 (folio 478) and plaintiff's exhibit 30 (map), thus showing conclusively that the tree referred to by Hancock as marked his Station 17, must have been an entirely different one from the real tree found and marked by Reynolds and adopted by Ensign. There seems to be absolutely no other theory that will explain how it was possible for both Hancock and Reynolds to start from Station 17 and run upon the same courses and distances down to the south boundary of township 2, and one party strike that south boundary 25 chains *west* and the other strike that same boundary 15.92 chains *east* of the common corner of sections 3, 4, 33, 34. This makes it clear that this line run by Reynolds, and afterwards retraced by Ensign, is not the line referred to by Hancock and delineated on the map that forms the basis of the alleged de Celis patent.

Then this question arises: If Hancock never made any actual survey on the lines indicated by Reynolds and Ensign, did he make any *actual* survey on the ground? Surveyor Ensign, chief witness for defendant in error, swears that the alleged Hancock "survey was not made according to the minutes," Record, page 212 (folio 630.) If then, as Ensign testifies, Hancock never made any survey according to his own minutes, and if he never made

a survey corresponding with that of Reynolds or of Ensign, as we think we have demonstrated, where is the evidence that he ever made any actual survey? And if he did, where is the land that he surveyed?

By following and comparing the Hancock field notes with those of Reynolds and of Ensign, we find similar irreconcilable discrepancies and similar proof that Hancock never made any actual survey of this de Celis claim. It is true that R. Pico, on behalf of defendants in error, testified that he was present and assisted in making the survey, but he swears that in making the survey they "commenced at the southeast corner and ran the south line first." Record, 140, (folio 412.) Whereas, Hancock's report and field notes represent that he ran in the contrary direction, and that instead of running the south line first he ran it last. (See Record, page 242, folio 720 and following.) Pico also fixes an entirely different time of year for the making of the survey from that indicated in Hancock's report. (See Record, page 142, folios 418–419.) It is true all this does not prove that the witness wilfully swore falsely. But the fact that he fixes a different time in the year from that indicated by the surveyor, and the fact that he claims that they started in the opposite direction from that shown in the surveyor's notes, especially when taken in connection with his statement (Record, page 142, folio 418) that he had "assisted Mr. Hancock to make several surveys" would indicate that it was most probably either the Government survey of these lands or else a survey of some other lands that he had assisted in making.

If, then, this alleged Hancock survey is fictitious and void, it necessarily follows that the patent based thereon is also void. (See Sec. 13, of said Act of March 3, 1851. Also *Telfener* v. *Russ*, 162 U. S., 182.)

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In presenting this argument we are well aware that on a writ of error this Court will not review the facts of the case under consideration except to the extent necessary to determine whether or not the State Supreme Court has committed one of the assigned errors of law.

But if there was any evidence in this case even tending to show that there never had been any actual survey of the de Celis claim, it was the duty of the trial court to allow that question to be decided by the jury. But in this case the trial court took this whole question, as to the *fact* of the survey, entirely away from the jury, by instructing them to find a verdict for the plaintiff. And this instruction is assigned as error.

We deem it needless to answer any of the opposing counsels' arguments or authorities in support of their contention that we are not in a position to attack a United States survey, however erroneous or however fraudulent it may have been. We frankly concede all that. But our position is, that while we are not in a position to attack an actual survey, we are in a position to attack a merely imaginary or fictitious survey, and to show that instead of being a survey in fact it is a mere myth.

As will be seen by our opening brief, the main question relied on by plaintiffs in error is, as to whether or not the California Supreme Court erred in affirming the action of the trial court, in its refusal to allow plaintiffs in error to introduce in evidence the petition of Eulogio deCelis presented to the U. S. Board of Land Commissioners, asking for a confirmation of his claim, upon which claim the alleged patent is based, under which the defendant in error asserts title to the land in controversy. The object in offering this document, together with other papers named, was for the purpose of proving thereby that the petitioner did not claim said lands "*by virtue of any right or title*

derived from the Spanish or Mexican government;" and that for this reason, the Board of Land Commissioners had no jurisdiction over the case. We then maintained, and have ever since, and do now maintain, that because of this want of jurisdiction the decree of the Board confirming the grant was absolutely *void*, and that being *void*, all subsequent proceedings based thereon, including the issuance of the patent, were equally *void*.

Opposing counsel, both in their original and in their supplemental brief, have practically wasted an immense amount of good argument in endeavoring to prove a proposition that we have *never* denied, namely, that we cannot collaterally attack a United States land patent. But there is a vast difference between a *patent* and a mere *nullity* in the *shape* of a patent.

The *real* question here is, not as to the right of the plaintiffs in error to attack a United States patent, but as to their right to prove that the document introduced in evidence by defendant in error as a patent had been issued without authority of law, and was in fact a *nullity*.

It seems to have been almost as difficult, both for opposing counsel and for the learned justice of the California Supreme Court who rendered the decision in this case, to understand the language employed by this Honorable Court in a certain decision cited by them as authority against the plaintiffs in error as it is for them to understand the language of our brief. We refer to the decision of this Court in the celebrated case of *Beard* v. *Federy*, reported in 3d Wallace, 478. This is a case which (as we read it) stands as a *controlling* and *unanswerable* authority in favor of our chief contention, namely, that the California Supreme Court erred in affirming the action of the trial court in its refusal to allow plaintiffs in error to introduce in evidence the petition of de

Celis, upon which the California Board of Land Commissioners acted when confirming his claim. In order that this Court may judge for itself as to whether *Beard* v. *Federy*, is an authority for or against our right to introduce the original petition of de Celis, for the purpose of showing a want of jurisdiction in the Board, we shall here insert that part of said decision which has a direct bearing on this question. In deciding that case the court said:

"The petition sets forth two sources of title, one founded on the laws of Spain and Mexico, and the other on continued possession of the property for a period of exceeding half a century. It avers that, at the time of the conquest and cession of California to the United States, the canon law of the Roman Catholic Church was in force as the law of Mexico, as it had been previously of Spain when Mexico was a dependency thereof, in all things relating to the acquisition, transmission, use and disposition of property, real and personal, belonging to the church, or devoted to religious uses; that, by the laws of Spain and Mexico, it was not necessary that a grant of land for ecclesiastical or church purposes should appear by deed or writing, public or pr vate, but that the right of the church to such property was always recognized and regulated by the canon law; that the premises in question being church lands at the Mission of San José, consisting of the church, church-yard, burial ground, orchard and vineyard, with the necessary buildings and appurtenances, the whole embracing a little over nineteen acres of land, had, for a long period, been devoted to religious purposes and uses; that, by the canon law and the laws of Spain and Mexico, the title, control, and administration of all ecclesiastical and church property was vested in the bishop and clergy of the diocese, who, for such purposes, were regarded as a body corporate; and that the Catholic Church, at the date of the conquest and cession of California to the United States, had been

in the actual and undisturbed possession of the premises in question since the year 1797.

"These averments clearly present a case within the jurisdiction of the Board of Commissioners. They show 'a claim by virtue of a right or title derived from the Spanish or Mexican government,' which is all that is required by the act of 1851. That act does not define the character of the right or title, or prescribe the kind of evidence by which it shall be established. It is sufficient that the right or title is derived from the Spanish or Mexican government, and it may in some instances rest in a general law of the land, as is the case usually with the title of municipal bodies under the Spanish and Mexican systems, to their common lands.

"The board having acquired jurisdiction, the validity of the claim presented, and whether it was entitled to confirmation, were matters for it to determine, and its decision, however erroneous, cannot be collaterally assailed on the ground that it was rendered upon insufficient evidence. The rule that applies to the judgments of other inferior tribunals applies here—that when it has once acquired jurisdiction, its subsequent proceedings cannot be collaterally questioned for mere error or irregularity."

In this case of *Beard* v. *Federy*, it does not seem that anybody, either counsel or court, ever raised or thought of raising the question as to the right of the party, denying the *validity* of the patent to prove its invalidity, if he could, by showing that it rested upon a decree that was void for the want of jurisdiction in the tribunal that made it. Nor was any question raised in that case as to the right of the party claiming adversely to the alleged patent to show by the original petition of the claimant that his claim was not "by virtue of any right or title derived from the Spanish or Mexican government" with a view of proving the want of jurisdiction in the Board, the void nature of its decree of confirmation, and the con-

sequent nullity of the patent based thereon. Mr. Justice Field, in delivering the opinion of this Court, did not say to the party denying the validity of the patent: you cannot assail this patent collaterally, no difference what the claimant's petition shows; no difference whether the board had jurisdiction to confirm the claim or not; no difference whether the patent is void or not, it cannot now be collaterally assailed. Had such been the decision of the court it would undoubtedly be an authority against us. But, on the contrary, taking it for granted that the party assailing the patent as void had a right to make good his contention by proving the nullity of the decree of confirmation on which the patent rested, the court proceeded at once logically and forcibly to discuss the question as to whether or not the petition of the land claimant did or did not in fact show a right or title derived from the Spanish or Mexican government; in order thereby to determine whether the board had acted without jurisdiction. And *then*, after having settled the question that the claimant's petition in that particular case *did* show "*a right or title* derived from the Spanish or Mexican government," and that this "*is all that is required by the Act of* 1851" in order to give the board jurisdiction, the court then proceeds to say:

"The board *having acquired jurisdiction*, the validity of the claim presented, and whether it was entitled to confirmation, were matters for it to determine, and its decision, however erroneous, cannot be collaterally assailed on the ground that it was rendered upon insufficient evidence."

And there can be no doubt but that this is the law. But the fact that such a decision as this could be cited, both by able counsel and an able court, as authority to

prove that these plaintiffs in error had no right to attack collaterally either what purported to be a judicial decree, or a land patent based thereon, because of a want of jurisdiction to make the decree or to issue the patent, only goes to prove that it is exceedingly fortunate for the reputation of this Honorable Court that it cannot be held responsible for all the strange interpretations that may be given to its decisions, either by other courts or by eminent attorneys.

It will be observed that the learned justice of the California Supreme Court, who rendered the decision in the case at bar, must *undoubtedly*, either through accident or mistake, have failed to read the whole decision in this case of *Beard* v. *Federy*. Here is his reference to that decision and the quotation he makes therefrom, he says:

"The same question was presented in Beard *v.* Federy, 3 Wall. 478, where, after the patent had been introduced in evidence by the plaintiff, the defendant produced the petition before the board of land commissioners, and insisted that it showed a want of jurisdiction in the board, for the reason that it did not set forth any right or title derived from the Spanish or Mexican government."

But the Court said:

"The board having acquired jurisdiction, the validity of the claim presented, and whether it was entitled to confirmation, were matters for it to determine; and its decision, however erroneous, cannot be collaterally assailed, on the ground that it was rendered upon insufficient evidence," etc.

But his honor omits *entirely* all reference to that portion of the decision which shows the reason *why* it was that in *that* case the board had jurisdiction. The very *marrow* of that decision is this; referring to the averments of the claimant's *petition*, this Court said:

"These averments clearly show a case within the jurisdiction of the board. They show a claim by virtue of a right or title derived from the Spanish or Mexican government, which is all that is required by the act of 1851."

But suppose that in the *Beard* v. *Federy* case this Court instead of holding, as it did hold, that the averments of the claimant's petition "showed a right or title derived from the Spanish or Mexican government" had on the contrary held that those averments did *not* show a right or title derived from the Spanish or Mexican government, would it not have been logically compelled to hold that the board acquired no jurisdiction and that having acquired *no* jurisdiction in the premises, its decree of confirmation, and all proceedings based thereon, were void? Now, while this Court, in this case of *Beard* v. *Federy*, *did* unquestionably decide that the averments of the claimant's petition, as presented in that case, did show "a claim by virtue of a right or title derived from the Spanish or Mexican government," it is equally true that this same Court, both in the case of *United States* v. *Vallejo*, 1 Black, 541, and *United States* v. *Workman*, 1 Wallace, 745, decided that averments like those set forth in the petition of Eulogio de Celis do *not* show "a claim by virtue of a right or title derived from the Spanish or Mexican government." Therefore, upon the authority of those decisions, we maintain that those averments show a claim over which the board of land commissioners had no jurisdiction whatever. The petition passed upon in the case of *Beard* v. *Federy* alleged a claim of title, resting upon a provision of the canon law, which formed a part of the laws of Spain and of Mexico; and this Court said that this allegation did in fact show "a claim by virtue of a right or title derived from the Spanish or Mexican government." But neither in the Vallejo

case, nor in the Workman case, nor in the case at bar, did the claim as presented to the board rest upon the *canon laws* as incorporated in the laws of Spain and Mexico; but in each of these cases the claim as presented rested upon alleged *sale* by Governor Pico to the claimant. And both in the Vallejo case and the Workman case, this Court has solemnly declared that there was *no power* in the California governor to make any such sales, and decided, in effect, that such sales gave no claim by virtue of "a right or title derived from the Spanish or Mexican government." So that unless this Court is prepared to overrule the doctrine laid down in both those cases, it is difficult to see how it can fail to reverse the decision in this case.

Inasmuch as opposing counsel, in their efforts to bolster up a bad case, have thought it necessary to characterize these plaintiffs in error as "*intruders*," "*marauders*," and "*conspirators*," it cannot be considered out of place, speaking within the limits of the record, and of the judicial history of California land titles, to say a few words in explanation of the motives that actuated these appellants in associating themselves together for the purpose of contesting this (as they believe) spurious land claim. This San Fernando Ex Mission claim, when it first made its appearance, purported to embrace about 13 or 14 leagues. And this was the quantity of land named in the so-called decree of confirmation. But when the alleged patent came forth "*presto change*" this thirteen leagues had suddenly grown to the enormous proportions of about double its original proportions, that is to say, it had grown to be about twenty-six leagues, covering an area of between one hundred and sixteen thousand and one hundred and twenty thousand acres of one of the finest bodies of land in the State of California, in the very heart of

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Los Angeles county, and immediately adjacent to the great and growing metropolis of Southern California. Long before this corporation, defendant in error, purchased the half of this immense claim now in controversy, it was a matter of public notoriety, not only in Los Angeles county, but throughout the State of California, that this, our highest American Court, had decided, that, under the Mexican law, Governor Pico never had any power to dispose of the public domain in the way that he had attempted to dispose of this San Fernando tract.

One thing that brought this ruling of our Supreme Court in a special manner to the knowledge of Los Angeles people was the fact that the land involved in the aforesaid suit of the United States *v.* Workman, is located in the same county, and near by the lands now in dispute. So that everybody in that community, knowing that the Workman claim and the de Celis claim were exactly alike, very naturally believed that, since the lands claimed by Workman belonged to the public domain, so did the lands claimed by de Celis. The only difference between the two cases was, that the Workman case had been appealed to and decided by the Supreme Court, while the de Celis claim, either through the ignorance, the negligence, or the venality of certain Government officials, had not been appealed. But the settlers were advised by attorneys, in whom they had the utmost confidence, that a lack of jurisdiction in the board of land commissioners rendered their decree confirming the de Celis claim ineffectual and void, so that it needed no reversal by the Supreme Court; and that the lands covered by the de Celis claim were just as much a part of the public domain as were those embraced in the Workman claim. But while religiously believing that these were public lands and not the property of the corporation claimant, they

knew from sad experiences that no *one* man of moderate means could defray the enormous expense of contesting with this millionaire corporation the validity of this claim, through the various courts and up to this Court of last resort. Hence it was that they formed an association called the Settlers' League, composed of sober, honest, industrious, hard-working men, who resolved to put a portion of their hard earnings into a common fund, not for the purpose of despoiling anybody of his rights, but for the purpose of preventing this Government from being permanently despoiled of upwards of 116,000 acres of its best lands. And upon what did these settlers base their hopes of success in so unequal a contest? Their hopes of success rested upon their conscious rectitude of purpose; their love of right and their abiding conviction that this august tribunal of last resort, in deciding their case, would be consistent, and stand by those same lofty principles of law and justice that guided it in rendering those able decisions to which reference has already been made. This little association of poor men, trusting to the law as laid down by this Court, were willing conjointly to risk their hard earnings in an honest and determined effort to wrench from the illegal and wrongful grasp of the defendant in error this immense property and restore it to the Government, its rightful owner. And because they did this thing they have been branded by opposing counsel as a band of conspirators. Now, *conspirators* are those who band themselves together for some unlawful purpose; for the purpose of perpetrating a wrong. If, then, there are any *conspirators* in this case who are they? Are they the men who, under the corporate name of the Los Angeles Farming and Milling Company, are struggling with all their might and money to maintain their unlawful grasp upon millions of dollars' worth of property

which, long before they purchased it at the diminutive figure of $115,000, they must have known from the decisions of this Court was the property of these United States, or is it that little band of toilers, who are putting forth their utmost efforts to prevent this great wrong—this most disgraceful public scandal?

Something has been said by opposing counsel about the good *faith* of this appellee in its purchase of these lands. Of course, that is a question which does not arise in this case, but if its claim to this land should (as we think it must) be adjudged void, then, under what is known as the Conness Act of Congress, passed in 1866, if the defendant in error honestly believes it can bring itself within the saving provisions of that act (which we do not think it can) it will then be in order for it to prove *its good faith*, as one of the essential conditions for the purchase of these lands from the rightful owner at the Government price. And, even adding this price to that already paid to the spurious claimant, the company would still have made millions by the speculation.

Z. MONTGOMERY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

C. S. THOMPSON ET AL.,
Plaintiffs in Error,

v.

THE LOS ANGELES FARMING AND MILLING COMPANY,
Defendant in Error.

No. 87.

Supplemental Brief for Plaintiffs in Error.

The essential facts of this case and the points on which the plaintiffs in error rely for a reversal of the judgment of the Supreme Court of the State of California have been so fully presented in the two briefs already filed by the late Hon. Z. Montgomery who had charge of the case in the courts below, on behalf of the plaintiffs in error, that this brief will necessarily be limited to a comparatively narrow compass. A brief statement of the material facts in the case and an elaboration of some of the points made in the two preceding briefs referred to is all that will be attempted.

Statement of the Case.

This was an action of ejectment brought by the defendant in error, a corporation, in the Superior Court of the County of Los Angeles, California, against the plaintiffs in error and certain other defendants who have since dropped out of the case, to recover a large tract of land in that county, alleged to have been patented to its predecessors in interest, in 1873, for what was known as the ex-Mission of San Fernando, purported to have been granted by Pio Pico, the provisional governor of California, on the 17th of June, 1846, to Eulogio de Celis.

The defences set up in the trial court, and afterwards relied on in the Supreme Court of the State of California, were, that this alleged Mexican grant was absolutely void; that the alleged patent therefor was likewise void, and did not, and could not, operate as a conveyance of title to this tract of land out of the United States; and that these void instruments of title could be shown to be void and of no effect in this action of ejectment.

The grounds upon which these defences were based were:

First. That, inasmuch as the alleged grant on its face purported to have been made by Pio Pico in June, 1846, for an expressed money consideration, and was not what was known in the Mexican law as a grant in colonization, it was without authority in law, and, therefore, a mere nullity, under numerous decisions of this Court which will be more particularly referred to hereafter.

Second. That this alleged grant purported and pretended to convey Mission lands; and, inasmuch as under the laws of Spain and Mexico, the governor of the Californias did not have any authority in 1846, or at any other time, to convey and sell Mission lands, therefore, for a second reason, the pretended grant was, and should be held to be, void and

a mere nullity, under certain other decisions of this Court which will be subsequently referred to.

Third. That there having been no authority in the governor of the Californias, under the laws of Spain and Mexico or under any other law or regulation, to make the alleged grant, either as a part of the public domain of Mexico, or as Mission lands, there was no authority in the board of land commissioners created by the Act of Congress of March 3, 1851, to entertain consideration of, much less confirm, the same; in other words, that the claim as presented to the said board of commissioners for confirmation showed on its face that it was not "*a claim to lands in California by virtue of any right or title derived from the Spanish or Mexican governments;*" and, therefore, the decree of confirmation was without authority of law, and was also absolutely void and a mere nullity.

Fourth. That the pretended grant being void, and the pretended decree of confirmation being also void, therefore the alleged patent issued in 1873, based upon said void grant and said void decree, all of which null and void features appeared upon the face of the patent itself, was also null and void and did not, and could not, convey any title to these lands to the pretended grantee; and he in turn could not convey any title to anyone else that could not be successfully attacked in a court of law, under a long line of decisions of this Court commencing in the time of Chief Justice Marshall and continuing down to the present time.

It was also contended by the defendants in the courts below, and a great deal of the record is made up of evidence tending to prove, that there had never been any actual survey on the ground of this pretended grant after its attempted confirmation and prior to the issue of what purported to be a patent in 1873.

It will thus be observed that the basic feature and prin-

ciple of the defence was, that this alleged grant made by Pio Pico in June, 1846, was without any authority in law, and was, therefore, void and a mere nullity, and that, as the grant was void, then all the subsequent proceedings and instruments in the chain of title must of necessity fail.

The plaintiff in the court below (defendant in error here), in order to make out its case, relied on the alleged patent which it introduced in evidence (Rec. 41, 42), and also introduced certain conveyances which tended to show that it was the holder of whatever title had been conveyed to the original grantee (Rec. 107), and also introduced certain oral evidence tending to show its possession of the tract from 1873 down to the date when it was alleged the defendants had taken possession thereof.

In order to make out their defence that the grant was absolutely void, the defendants attempted to introduce in evidence the original petition presented by the claimant to the board of land commissioners asking a confirmation of his pretended claim (Rec. 233), and also attempted to introduce as evidence the original grant made by the governor of the Californias (Rec. 235), which were the muniments of title presented to the board of commissioners under the act of March 3, 1851; but the trial court refused to permit the introduction of these papers as evidence, and held that the defendants could not go behind the pretended patent (Rec. 242); to each and every of said rulings the defendants excepted and those exceptions are made the basis of the assignments of error here. The court then instructed the jury to bring in a verdict for the plaintiff (Rec. 278); and judgment having been entered on the verdict (Rec. 289), an appeal was taken to the Supreme Court of the State of California where the judgment below was affirmed (Rec. 289.) From this affirmance this writ of error was prosecuted.

The assignments of error are set forth in full on page 299 of the record, and are found on page 5 of Mr. Montgomery's first brief filed in this Court. They will not be repeated here.

ARGUMENT.

Two principal questions arise under these assignments of error:

First. Was the alleged grant on which the pretended patent was based void for want of authority, in the governor of the Californias, in 1846, under the laws of Spain and Mexico to make it? and—

Second. Could this void character of the grant and the subsequent proceedings and instruments purporting to convey title be shown by the defendants in a court of law, in an action of ejectment?

It is insisted on behalf of the plaintiffs in error that both of these questions must, under the law, as expounded by this Court, be given an affirmative answer.

First. It is insisted that this pretended grant was void for two reasons:

(*a*) In California, prior to the occupation of the territory by the military forces of the United States, the only laws in force for the disposal of the public domain by the provisional governor of the province was what was known as the colonization act of the Mexican congress of 1824, and the regulations of 1828 which were made by the supreme government for the enforcement of that act; and, inasmuch as this de Celis grant did not pretend to be a grant in colonization, it was, of necessity, in the very teeth of the law, and was, and must be held to be void, and an absolute nullity.

(*b*) The governor of the Californias did not have any authority under that act and those regulations to make a

grant of mission lands; and, therefore, this pretended grant to de Celis was null and void for another and additional reason.

These propositions will be considered in the order in which they are presented.

First. What was the power of the governor of the Californias, in 1846, to make any grants of land in that province?

In *United States* v. *Cambuston*, 20 How. 59, 64, this Court, referring to a grant somewhat similar to this one, made by Governor Pico on May 23, 1846, said:

> "In the examination of the evidence in this case, we have found it very difficult to resist a suspicion as to the *bona fides* of the grant in question. * * * It was made but a month and a half before the country was taken possession of by the arms of the United States, and made by a person who had but recently expelled from the Territory by force its lawful governor (Micheltorena) and taken possession of it himself. Whether or not Pico had been recognized by the existing government in Mexico does not appear. Micheltorena was overthrown by the joint forces of Castro and Pico in the spring or forepart of the summer of 1845. Civil commotion raged throughout the Territory from this period down to the 7th of July, 1846, when the authority of Pico and Castro themselves was subverted, and possession taken and held by the arms of the United States until the cession of the country to this Government by the treaty of Guadalupe Hidalgo. The grant purporting to have been made by Pico, so near the time when the government of the territory had passed from his hands, and, indeed, during the very heat and conflict of the struggle in which his power was overthrown, it, and all others similarly situated, should be inquired into and scrutinized with great care, both as to the authority of the governor to make them,

> and the *bona fides* of its exercise, in order to prevent imposition and frauds. The Court below appears to have been very much pressed with the unsatisfactory character of the evidence, and with doubts as to the genuineness of the title, and seems to have yielded rather to the apparent acquiescence of the representatives of the government, in the decision of the commissioners, than to any settled convictions of its own judgment."

The Court thereupon reversed the decree of the court below which had affirmed the decision of the Board of Land Commissioners appointed under the act of March 3, 1851, confirming the grant, and remanded the case to the court below for a further hearing.

The above quoted remarks are particularly applicable to a grant made by this same Governor Pico, on the 17th of June, 1846, twenty-five days after the alleged grant in the case referred to. At that time the civil commotion referred to had increased, and this same Pico was making innumerable grants for a money consideration in order to raise funds wherewith to repel the forces of the United States in that Territory.

In *United States* v. *Hartnell's Executors*, 22 How. 286, 289, the power of the governor of California to make a grant of lands for colonization purposes for more than eleven square leagues of land came before this Court for consideration. There, be it remembered, no doubt could arise as to the power of the governor to make a grant of lands for colonization purposes, that being the very object of the act of 1824 and the regulations of 1828.

In speaking for the court, Mr. Justice Catron said:

> "The narrow question is, had the governor of California power in 1844 to grant gratuitously, for the purpose of tillage, inhabitancy and pasturage, more

than eleven leagues of land to any one person? Section 12 of the law of 1824 provides, that it shall not be permitted to *unite* in one hand, as property, more than one league of irrigable land, four leagues of farming land, not irrigable, and six for stock raising. * * * The public domain was the property of the Mexican nation, and those who were enabled to displace the title, separate portions of it from the public lands, and vest such portions into individual proprietors by perfected titles, could only do so in the exercise of sovereign power, because the public title was a sovereign right; and agents who assumed to exercise this authority must show that they represented the nation. *The governors of California do not show that they did represent the nation, so as to conclusively bind it;* to have this effect, the governor's grant must have the concurrence of the departmental deputation. It follows, that the assembly was the controlling power, and could reform or nullify the governor's grant."

In *United States* v. *Vallejo*, 1 Black, 541, the question of the power of the governor to make a grant of the public lands of California for a pecuniary consideration came squarely before this court for consideration; and it was there held that the only laws in force in the province of California under which the governor of the territory could make a valid grant were the act of 1824 and the regulations of 1828; that those laws and regulations only conferred upon the governor the power to make grants in colonization; and that he had no power whatever to make a grant of the public domain for a pecuniary consideration.

In that case, the claimant produced two alleged grants to a large tract of land in California, one purporting to have been made by the governor, in colonization, in 1843, under the act of 1824 and the regulations of 1828, and the other a grant founded on a sale of the same lands to him for a consideration of $5,000, dated June 19, 1844. This Court

held the first, or colonization grant, to be invalid because of want of compliance with any of the requirements of the act of 1824 and the regulations of 1828; and held the second alleged grant to be invalid for want of power in the governor to make it.

In the opinion of the Court, delivered by Mr. Justice Nelson, the following language occurs:

> "The main objection to this grant [the one made for a pecuniary consideration] is the want of power in the governor to make it; and this raises the question whether or not the governor possessed any power to make grants of the public lands independently of that conferred by the act of 1824 and the regulations of 1828." (1 Black, 550.)

And after a thorough discussion of all the laws of Mexico and Spain relating to the disposal of the public lands in the territories, the court decided the question which it had itself propounded in the negative.

In *United States* v. *Fuentes*, 22 How. 443, 454, the same doctrine is announced, and it was there said:

> "The act of 1824 and the regulations of 1828, are limitations upon the power of the governor to make a grant of lands."

In *United States* v. *Vigil*, 13 Wall. 449, 450, this Court, speaking by Mr. Justice Davis, again went into this question of the power of the territorial governors of the Mexican provinces to make grants of the public lands within their territories, especially one for a pecuniary consideration, and said:

> "It has been repeatedly decided by this Court, that the only laws in force in the territories of Mexico for the disposition of the public lands, with the exception

of those relating to missions and towns, are the act of the Mexican Congress of 1824 and the regulations of 1828. The avowed purpose of the Congress in enacting this law, and of the Supreme Government in carrying it into effect, was to colonize the public domain; to preserve it for settlement or cultivation. The favor of the legislature has, doubtless, been often abused by unworthy ministers in charge of the remote territories, but this consideration in nowise detracts from the wisdom of the policy on this subject. This policy recognized the obligation resting on the government to hold the public lands as a public trust, to be administered for the benefit of those who would settle upon them and cultivate them. THEY COULD NOT BE SOLD FOR MONEY, NOR GRANTED AWAY IN CONSIDERATION OF PAST PUBLIC SERVICES, NOR ON CONDITION OF MAKING PUBLIC IMPROVEMENTS OF USE TO THE TRAVELLING COMMUNITY. THE POWER TO CEDE THEM DEPENDED ENTIRELY UPON THE USES TO WHICH THEY WERE TO BE PUT, AND THESE, AS WE HAVE SEEN, WERE CULTIVATION OR SETTLEMENT. THE LEGAL RIGHT TO DISPOSE OF THEM FOR OTHER OBJECTS WAS WITHDRAWN FROM THE LOCAL AUTHORITIES AND RESTED ALONE WITH THE SUPREME GOVERNMENT."

Citing, among other cases, the case of *United States* v. *Vallejo*, above referred to.

In the light of these decisions, what is the predicament of this de Celis grant, made by this same Governor Pico on the 17th of June, 1846? What authority in law do we find for its existence? Was it, or did it purport to be, one in colonization, made under and by virtue of the authority of the act of the Mexican Congress of 1824, and the regulations of 1828? Unqualifiedly not. In the examination of the petition presented to the governor by de Celis (Rec. 233), the grant itself (Rec. 235), and the patent itself (Rec. 42), we look in vain for any reference to this colonization law and the regulations made to carry it into effect.

But what we *do* find is that it purported to have been made by the governor of the province *in consideration of a sum of money* alleged to have been paid therefor—that it was a sale upon a pecuniary consideration—a sale which, in the language of this Court in the cases above referred to, the governor of California in 1846, or at any other time, did not have the power under the law to make.

It seems so plain that this grant was in the very teeth of the law, that further discussion of it would appear to be a waste of words.

In the court below, we offered to prove that this alleged grant was void for the reasons here stated, and were refused that right. That refusal, we then said was error, and we say still was error; error which this Court has the power to correct, and ought to correct.

Second. But this alleged grant was absolutely null and void for still another reason. It was an attempted sale of Mission lands; and, under the laws of Spain and Mexico, the governor of California did not have any power or authority to make any sale of Mission lands for a pecuniary consideration. There cannot be any possible doubt of the correctness of this proposition. The identical question has been decided by this Court on more than one occasion.

It first arose in the case of *United States* v. *Workman*, 1 Wall. 745. That was a case in which the validity of an alleged grant made by this same Governor Pio Pico, on the 8th of June, 1846 (nine days prior to the alleged grant in the case at bar), of the Mission of San Gabriel, situate within a few miles of the Mission of San Fernando, which lands are the subject matter of this action. By a unanimous court, it was held that the governor of California did not have any authority, under *any* law, to make a grant of Mission lands, and the purported grant was therefore held

to be, and to always have been, void and of no effect in law. At the same time the court decided the case of *United States* v. *Jones*, in which a like decision was rendered in respect of the Mission of San Luis Rey, 1 Wall. 766.

Again, in the case of *Beard* v. *Federy*, 3 Wall. 478, 490, the same conclusion was arrived at in respect of a purported Mexican grant made by this same Governor Pio Pico on the 20th of June, 1846, three days after the alleged grant in this case. In the decision of the Court announced by Mr. Justice Field, who was perhaps without a peer in this country, in his knowledge of the Mexican laws relating to the disposition of the public lands by the governors of the Californias, the learned Justice said:

> "The Circuit Court, as already stated, treated the grant as one in colonization. This was the most favorable view for the defendants, FOR IF THE RECITALS THAT IT WAS MADE UPON A SALE OF MISSION LANDS, AND UPON AUTHORITY CONFERRED BY THE DEPARTMENTAL ASSEMBLY, ARE TO DETERMINE ITS CHARACTER, IT IS WITHOUT ANY EFFICACY IN PASSING THE TITLE. IT IS SIMPLY A VOID INSTRUMENT, AND FALLS DIRECTLY WITHIN THE DECISION OF THIS COURT IN *United States* v. *Workman*, 1 Wall. 745. In that case the powers of the Departmental Assembly in the alienation of lands were very fully and elaborately considered, and particularly its asserted power to authorize the governor to sell the Mission lands, and it was held that this body could not confer any power upon the governor, and that its own power was restricted to what was conferred by the laws of colonization, which was simply to approve or disapprove of grants regularly made by the governor *under those laws*."

See also the very learned decision of the Circuit Court of the United States for the Northern District of California in *Bouldin* v. *Phelps*. (30 Fed. Rep. 547.)

Some question has arisen whether the doctrine of *More* v. *Steinbach*, 127 U. S. 70, does not militate against the decisions in the cases of *United States* v. *Workman*, *United States* v. *Jones*, and *Beard* v. *Federy*, above referred to, especially as it would appear from a cursory reading of the decision of the court in that case that this Court itself had confirmed a grant of the Mission of San Buenaventura, made by Pio Pico on the 8th of June, 1846, to one Poli. But reference to the original records of this Court in the San Buenaventura grant (Case No. 302, December Term, 1868) shows that the question of the validity of the grant never came before this Court for consideration, notwithstanding the statement to that effect on page 84 of the decision in *More* v. *Steinbach*. The records show that the grant was confirmed by the board of land commissioners and also by the district court; but, notwithstanding the fact that the case came to this Court twice on appeal, we find that the first appeal was dismissed, and on the second appeal it was simply affirmed, *not upon consideration by the court*, but on motion of the Attorney General. (See order of March 2, 1869, in said case.) So that, this Court never did pass upon the validity of that pretended grant or ever have an opportunity to do so.

But even in that same case of *More* v. *Steinbach*, it was not even hinted that the decision in *United States* v. *Workman* was not the law. On the contrary, it was referred to with approval, and the statement was made that there must have been some exceptional circumstances which took the Poli grant out of the rule in the *Workman case*; and the court very properly said that it was bound to presume so, in the absence of any evidence to the contrary. What the exceptional circumstances were in that case have been stated above; and it is respectfully submitted that, in the light of those circumstances, there is no conflict with the doctrine of the older cases.

Moreover, as is fully pointed out in the brief of Mr. Montgomery, there was no attempt made in the trial of the case below in *More* v. *Steinbach*, to introduce any evidence to show the invalidity of the grant to Poli, as was done in the case at bar in respect of the de Celis grant; and that distinction alone is sufficient to differentiate that case from the case at bar.

The Supreme Court of the State of California, in its decision in the case at bar, undertook to distinguish this case from the cases of *Workman* and *Vallejo*, by saying that in those cases the grants had been finally decided to be void by this Honorable Court, while such was not the case in reference to this de Celis grant. If that is any logical distinction, we must confess that we are too obtuse to see it. The effect of that proposition is to hold that, in no instance and under no circumstances can any judgment be attacked collaterally for want of jurisdiction in the court rendering it. Such a proposition will not stand the test of the law an instant, and does not need any authorities to show its incorrectness.

For instance, can it be said that the power of the governor of California to make a valid grant of the Mission lands of San Gabriel, in the *Workman case*, and of the Mission lands of San Luis Rey, in the *Jones case*, and of lands of the public domain in the *Vallejo case*, existed up until this Honorable Court decided those cases at December Term, 1863 and that because the board of land commissioners, under the act of March 3, 1851, had confirmed those grants, and their decisions had been affirmed by the District Court of the United States for the Southern District of California, therefore, the grants were valid ones if no appeals had been taken to this Honorable Court? In other words, did the decisions of this Court in those cases *make those grants void?* Manifestly not. All that the decisions of

this Honorable Court did in those cases was to declare that those three purported grants had never had any validity—that they always had been void. The power of the courts is not to make laws, but to declare what the law is.

To state the proposition in still another form, generally. What was the effect of the judgments of this Honorable Court in the *Workman*, *Jones*, and *Vallejo* cases, in respect of the validity of the alleged grants in those three cases? Was it to declare that the judgments below would have been valid and would have stood against collateral attack but for the appeals to this Court? Certainly not. What this Court decided in those cases, and the effect of the judgments therein, was that the board of land commissioners, under the act of March 3, 1851, and the District Court did not have any jurisdiction to entertain a petition for the pretended grants of the Missions of San Gabriel and San Luis Rey or of the pretended grant in the *Vallejo case*. No other theory can be advanced on this point. Why were the petitions dismissed in those cases? Was it because of insufficient evidence to prove the existence of the ministerial acts of the governor in making the pretended grants? Or was it because of any fraud or mistake of any sort on the part of the pretended grantees? Not at all. The petitions were dismissed because of the absence of power and authority *under any law*, in the governor to make any one of the pretended grants; because these pretended grants never had had any validity at all; because they were grants over which the board of land commissioners appointed under the act of March 3, 1851, did not have any jurisdiction; because they were not grants of land or "claims to lands in California by virtue of any right or title derived from the Spanish or Mexican governments."

Such being the case, will it be contended for an instant that

the alleged grants in the *Workman*, *Jones*, and *Vallejo* cases could not have been attacked collaterally even if they had not been finally rejected by this Honorable Court in a direct proceeding? On this proposition, it would seem that there ought to be no doubt. The question of jurisdiction can always be inquired into, *in any court*, where the validity of a judgment comes up for consideration. This is so elementary that it is not thought necessary to cite any authorities to support it. A void judgment is void everywhere and for all purposes. It is no judgment at all. It never had any force or effect even in the court which rendered it, for the very obvious reason that that court did not have any jurisdiction to hear and determine the issues in the case in which such judgment was rendered.

THE SUPREME COURT OF CALIFORNIA ALSO MISAPPLIED THE DOCTRINE OF THIS HONORABLE COURT ANNOUNCED IN THE CASE OF *Beard* v. *Federy*, 3 Wall. 478.

Inasmuch as the judgment of the Supreme Court of California in the case at bar was, or seems to have been, predicated largely upon this *Beard-Federy* case, and inasmuch as the other side also rely very largely on this same case to sustain their contention, it would seem to be necessary to examine this case somewhat carefully to see what it actually was and what it decided. In the view taken of this case by counsel for the plaintiffs in error it is not only *not* an authority in support of the judgment of the court below and the position taken by counsel for the defendant in error, but is, in fact, an authority against them, and is of the *very highest authority* in support of all the contentions made on behalf of the plaintiffs in error for a reversal of the judgment of the court below.

That case, like the one at bar, arose in California, and

was an action of ejectment. The plaintiff below, who was the defendant in error here, claimed title under a Mexican grant to the Bishop of Monterey of the Mission of San José, and the defendant below (plaintiff in error here), claimed title under and by virtue of an alleged grant made of the same lands by Governor Pico on the 20th of June, 1846, to one Castenada and others. The Bishop had presented his claim to the board of land commissioners under the act of March 3, 1851, which had confirmed it, and the confirmation had become final by reason of the dismissal by the United States of their appeal to the District Court; and, thereupon, a patent had issued by the United States to the Bishop for the claim. The alleged grant to Castenada and others had never been presented to the board of land commissioners.

On the trial of the case in the court below the plaintiff relied upon the patent to the Bishop and certain conveyances which placed in him whatever title had been possessed by the Bishop under the grant and the patent. The defendant attacked this title and sought to show that the claim of the Bishop never had had any validity, under the Spanish or Mexican laws, and for this purpose introduced in evidence the petition of the Bishop which had been presented to the board of land commissioners asking a confirmation of the claim. He also relied on the strength of his own title.

In the decision of this Honorable Court, the question of the validity of the title of the Bishop was gone into very fully, notwithstanding the fact that the party who derived title from him relied upon the patent of the United States to the land in dispute. This Honorable Court did not hold that no inquiry could be made into the validity of the claim which the Bishop had presented to the board of land commissioners as the basis of the right to a patent, as is con-

tended by the Supreme Court of California and counsel for the defendant in error in the case at bar, but, on the contrary, *did* proceed to make such inquiry for the expressed purpose of ascertaining whether the board of land commissioners had had jurisdiction to entertain the petition for confirmation. Having made this investigation for the purposes mentioned, and having ascertained from such investigation that the claim of the Bishop was "a claim to lands in California by virtue of a right or title derived from the Spanish or Mexican governments," and that, therefore, the board of land commissioners had *had* jurisdiction to entertain it and to confirm it, this Honorable Court very properly laid down the general doctrine relied upon by the court below and counsel for the defendant in error, as announced in the following language:

> "The board having acquired jurisdiction, the validity of the claim presented, and whether it was entitled to confirmation, were matters for it to determine, and its decision, however erroneous, cannot be collaterally assailed on the ground that it was rendered upon insufficient evidence. The rule which applies to other inferior tribunals applies here,—that when it has once acquired jurisdiction, its subsequent proceedings cannot be collaterally questioned for mere error or irregularity." (3 Wall. 489.)

But suppose, in the investigation of the claim by this Court, it had ascertained that the claim of the Bishop, as disclosed by his petition presented to the board of land commissioners, was *not* "a claim to lands in California by virtue of any right or title derived from the Spanish or Mexican governments" what would the judgment of this Honorable Court have been? Would any one have the temerity to assert that in such an event this Court would have held that the patent issued to the Bishop could not

have been attacked in that action? Would this Honorable Court have held that that patent conveyed a good and complete title to the premises in controversy, notwithstanding the fact that the claim on which it was based did not have any validity under the laws of the former governments? Would this Honorable Court have held that the patent issued by the United States to the Bishop was valid and could not be collaterally attacked, notwithstanding the fact that the board of land commissioners did not have any authority to confirm his claim? Manifestly not. The very gist of the decision and judgment of this Honorable Court on this point was, that in a case of this kind, in an action of ejectment, where the plaintiff had to rely upon the strength of his own title, the foundations of that title could be inquired into; and if it were shown that the foundations of the title were good; that the claim as presented to the board of land commissioners was a valid claim, under the laws of the former governments; that it was "a claim to lands in California by virtue of a right or title derived from the Spanish or Mexican governments;" that it was a claim which the board of land commissioners had jurisdiction to entertain and confirm,—then the patent issued by the United States on such confirmation could not be collaterally attacked. But that if none of those conditions of validity existed in the claim; that it was *not* a valid claim to lands *under the laws of the former governments*, then the board of land commissioners did not have any authority or jurisdiction to confirm it, and the patent issued by the United States on such void confirmation was itself absolutely null and void and could be shown to be so in an action of ejectment. In other words, the very gist of the decision and judgment of this Honorable Court in that case, on this point was, that THE JURISDICTION OF THE BOARD OF LAND COMMISSIONERS, IN CONFIRMING, OR

ATTEMPTING TO CONFIRM, THE CLAIMS TO LAND IN CALIFORNIA, WHICH HAD BEEN PRESENTED TO IT FOR CONFIRMATION, COULD BE INQUIRED INTO. And that was precisely what the Court did in that case.

Having found that the board *did* have jurisdiction to confirm the claim of the Bishop, it necessarily held that the title under which the plaintiff claimed was good and should prevail unless the defendant should produce a better title—one anterior in date. The court thereupon proceeded to inquire into the title of the defendant under the alleged Mexican grant made by Governor Pico on the 20th of June, 1846, to Castenada—a pretended grant on all fours with the de Celis grant in the case at bar—and held that it was invalid for several reasons, one of which was that *there was no power in the governor* at the date of the alleged grant, or at any other time, under the laws of Spain and Mexico, *to make a grant of Mission lands;* citing as its authority for such ruling the case of *Workman, supra.* But that feature of the decision and judgment of this Honorable Court in the *Beard-Federy* case has already been fully discussed in the earlier portions of this brief, and will not be further considered now.

Suffice it to say, that, as we read the case of *Beard* v. *Federy*, it sustains every proposition that we have advanced in the case at bar, and cannot be even tortured into being an authority against us. The court did there just what we have insisted from the beginning it should do here, viz., consider the petition that was presented to the board of land commissioners for a confirmation of the claim, notwithstanding the fact that a patent has been issued by the United States based upon such purported confirmation. What we endeavored to show in the courts below, and what we insist here we have the right under the law to show, is, that the petition presented to the board of land

commissioners by de Celis *on its face* showed that the claim for land which he had from the governor of California was not "a claim to land in California by virtue of any right or title derived from the Spanish or Mexican governments;" and that, therefore, the board did not have any jurisdiction to confirm it.

The lack of jurisdiction in the board of land commissioners to confirm this pretended claim appeared not only in the petition of de Celis for a grant (Rec. 233), but also in the grant itself (Rec. 235), and it likewise appears on the face of the patent itself (Rec. 42). Consequently, when the plaintiff in this case below offered the pretended patent in evidence as the source of its title, it had not made out any part of its case. It had only offered in evidence a pretended patent of the United States *which showed on its face* that it had been issued without authority of law, and was not worth the paper on which it was written. This purported patent showed on its face that it had been issued in virtue of a grant made by Pio Pico, on the 17th of June, 1846, for a consideration in money, of the ex-Mission of San Fernando; and inasmuch as this Honorable Court had previously decided over and over again that the governor of the Californias did not have any authority, under the laws of Spain or of Mexico, in 1846, or at any other time, to make any grant of lands in that territory except for colonization purposes, under the act of the Mexican Congress of 1824 and the regulations of the supreme government of 1828 to carry that act into effect, and that in no instance could the governorof the Californias sell the Mission lands—then, we say, this purported patent showed on its face that it was absolutely null and void; and had a demurrer to the evidence of the plaintiff in the court below been interposed, it ought to have been sustained.

There remains to be considered only one proposition, viz:

THIS ALLEGED GRANT BEING ABSOLUTELY NULL AND VOID, THE BOARD OF LAND COMMISSIONERS BEING WITHOUT JURISDICTION TO CONFIRM IT, AND THE PATENT BASED ON SAID VOID GRANT AND SAID VOID DECREE OF CONFIRMATION BEING ALSO, AND OF NECESSITY, NULL AND VOID, COULD THE DEFENDANTS IN THE COURT BELOW (PLAINTIFFS IN ERROR HERE) BE PERMITTED TO SHOW SUCH INVALIDITY BY INTRODUCING AS EVIDENCE THE PETITION AND GRANT PRESENTED TO THE BOARD OF LAND COMMISSIONERS AND ALSO THE PRETENDED DECREE OF CONFIRMATION, AS THE FOUNDATION OF THE TITLE UPON WHICH THE PLAINTIFF BELOW RELIED?

Reference has already been made to the case of *Beard* v. *Federy*, where the very thing which was attempted to be done on behalf of the defendants in the court below in this case, viz., to show that the grant, the decree of confirmation, and the patent issued thereon were null and void, was actually done in a case precisely like the one at bar in this respect.

But reliance is not placed on the *Beard-Federy* case alone. It is elementary that in an action of ejectment, the plaintiff must recover, if at all, on the strength of his own title and not on the weakness of the defendant's title. That elementary rule has been applied by this Honorable Court in a great many and variety of cases, involving almost every conceivable phase of land titles, especially where the title of the plaintiff in an action of ejectment was based upon a patent of the United States; and in no case, so far as our investigations have extended, has it ever been denied the defendant in an action of ejectment, to introduce evidence to show that the alleged patent under which the plaintiff claimed was null and void for want of power and authority in the officers of the government to issue it.

As was said by this Court, speaking by Mr. Justice

Lamar (a recognized authority on matters relating to the public lands), in *Knight* v. *U. S. Land Association*, 142 U. S. 161, 176:

> "Ever since the decision in *Polk's Lessee* v. *Wendall*, 9 Cranch, 87, it has been the settled law of this Court that a patent is void at law if the grantor State had no title to the premises embraced in it, or if the officer who issued the patent had no authority to do so, and that the want of such title or authority can be shown in an action at law;"

and in support of this doctrine, a long list of authorities was cited. It will not be necessary to refer the Court to all of those authorities or to analyze each particular case. It will be sufficient, no doubt, to refer to the general trend of the authorities, and to refer particularly to only a few of the cases which are most nearly like the case at bar. As we have already said, the general doctrine laid down in the case last cited is not, and cannot be, disputed. It is true, that in a majority of the cases in this Court, the defendant in the action of ejectment was relying upon some sort of title of his own, and not altogether on the weakness of the title of the plaintiff. But such was *not* the case in all of them, particularly in the cases of *Reynolds* v. *Iron Silver Mining Co.*, 116 U. S. 687, and *Doolan* v. *Carr*, 125 U. S. 618. In neither of these cases did the defendant in the action of ejectment in the court below have *any* title whatever to the premises in dispute, and in both of them they were permitted to show that the pretended title of the plaintiffs in said actions was null and void, although in both cases the plaintiffs were relying upon a patent from the United States which embraced the premises in controversy; and as proof positive that this question was considered by the Court, there is a dissenting opinion by Mr. Chief Justice Waite on the very point, he contending, in opposition

to the majority, that the defendants, not having any title at all, should not be permitted to attack the alleged title of the plaintiffs, which was a purported patent from the United States embracing the lands in dispute.

The opinions of the Court in both of those cases were delivered by Mr. Justice Miller, recognized by the bench and bar of this country as one of the ablest and most profound jurists that the country ever produced. In the opinion in the *Reynold's case*, the learned Justice said:

> "If there is any exception to the rule that in an action to recover possession of land the plaintiff must recover on the strength of his own title, and that the defendant in possession can lawfully say until you show *some* title, you have no right to disturb me, it has not been pointed out to us." (116 U. S. 692.)

That was a case in which the plaintiff in the trial court was the holder of a title under a United States patent for a tract of placer mineral ground. Within the limits of the placer patent, there were certain lodes which were known at the date of the issue of said patent to which the defendants did not have any title whatever, but they were working them for the ores therein. The plaintiffs brought an action to recover from the defendants the possession of the lodes, relying upon the placer patent, which, as before stated, embraced the premises in dispute.

On this state of the case, it was held that the plaintiffs could not recover, because their placer patent did not convey any title to the lodes, which were known at the date of the issue of their patent, even though the defendants were simply intruders upon the prior possession of the plaintiffs. The attention of this Honorable Court is especially invited to the language of the dissenting opinion in this case for a concise and clear description of the points

of difference between the opinion of the majority and the dissenting Chief Justice; and it is respectfully submitted, that the decision of the Court was in exact harmony with the contention of the plaintiffs in error here.

The case of *Doolan* v. *Carr, supra,* is another case in principle precisely like the one at bar on this point, the defendants in that case having stood in precisely the same position as respects the land there in suit as do the defendants in the case at bar in respect of the land here in controversy. That was an action of ejectment brought by the holder of a United States patent issued to the Central Pacific Railroad Company under the acts of 1862 and 1864, making a grant of public lands to said company, to recover 320 acres of land in the State of California. Subsequently to the issue of the patent to the railroad company, the defendants had gone upon the land and settled there, and had attempted to acquire title thereto under the pre-emption laws by going to the local office and tendering their pre-emption declaratory statements accompanied by the necessary fees in such cases. Their declaratory statements had been refused by the local land officers because the land had already been patented to the railroad company. But they still remained upon the land, and the action was brought to dispossess them.

Their defence to the action was, that the alleged patent under which the plaintiff claimed was absolutely void and a mere nullity, because the lands embraced within it, although within the primary limits of the grant to the railroad company, had been excepted from said grant for the reason that at the date of the grant and also at the date of the definite location of the road they were in a state of reservation, having been embraced within the limits of a Mexican grant which at that time was *sub judice;* and they offered to prove their defence by the introduction of the evidences of said Mexican grant, and that the lands were reserved from the

operation of the railroad grant by reason thereof. The plaintiff objected to the proof thus offered to be made by the defendants on the ground "that the United States patent cannot be collaterally attacked in this action; that it can be attacked by bill in equity only; that the said United States patent and the recitals therein contained are conclusive evidence in this action that the legal title to the lands therein described was granted and transferred by the United States to the grantee named in said patent, and, taken in connection with the deed from the railroad company to the plaintiff, is conclusive evidence of the plaintiff's right to recover." (125 U. S. 624.)

The court sustained the objection, and refused to allow said proof, or any part of it, to be made, to which the defendants excepted. The court then charged the jury that

> "the patent title to this land to the Central Pacific Railroad Company is conclusive in this case. It cannot be attacked in a collateral manner. If it can be attacked at all it is only by a direct proceeding for the purpose of vacating the patent; and, without further remark upon this, one way or the other, it may be sufficient to say that I charge you the law is that, so far as this case is concerned, the patent from the Government to the railroad company, the first patent introduced here, is conclusive of the rights of the parties in this case" (*Id.*, 624).

To this charge the defendants excepted; and the case in this Honorable Court was as to the correctness of the rulings of the trial court. In the language of the opinion delivered by Mr. Justice Miller:

> "The case before us turns upon the correctness of the ruling of the court on the proposition that in an action at law none of the evidence offered by the defendants could be received to impeach the validity of

the patent, and that such an issue as that attempted to be raised by the defendants could only be made by a suit in equity to set it aside." (*Ibid.*, 624.)

In disposing of this question, the learned justice said:

"There is no question as to the principle that where the officers of the Government have issued a patent in due form of law, which on its face is sufficient to convey the title to the land described in it, such patent is to be treated as valid in actions at law, as distinguished from suits in equity, *subject, however, at all times to the inquiry whether such officers had the lawful authority to make a conveyance of the title.* But if those officers acted without authority; if the land which they purported to convey had never been within their control, or had been withdrawn from that control at the time they undertook to exercise such authority, then their act was void—void for want of power in them to act on the subject-matter of the patent, not merely voidable; in which latter case, if the circumstances justified such a decree, a direct proceeding, with proper averments and evidence, would be required to establish that it was voidable, and should therefore be avoided. The distinction is a manifest one, although the circumstances that enter into it are not always easily defined. It is, nevertheless, a clear distinction, established by law, and it has been often asserted in this Court, that even a patent from the Government of the United States, issued with all the forms of law, may be shown to be void by extrinsic evidence, if it be such evidence as by its nature is capable of showing a want of authority for its issue. The decisions of this Court on this subject are so full and decisive that a reference to a few of them is all that is necessary." (*Ibid.*, 624.)

And then a full and complete analysis of most of the leading decisions of this Court on this question is made, commencing with *Polk's Lessee* v. *Wendall*, and running

down to the time of the decision of the Court in the case then under consideration. The result was, that in that case the judgment below was reversed and the case remanded to the Circuit Court for a new trial.

As above stated, Mr. Chief Justice Waite again dissented, not on the ground that the alleged patent under which the plaintiff claimed was not void, but only on the express ground that the defendants not having any title of their own were not in a position to set up the defence that said patent was null and void. Thus emphasizing the correctness of the very point and principle which is contended for on behalf of the plaintiffs in error in the case at bar.

The doctrine of this case has never been departed from or even questioned. Neither has it been explained away, as is suggested by counsel for defendant in error.

It seems unnecessary to review any of the other numerous cases in this Court holding the same doctrine. They are practically all referred to and considered in the case of *Doolan* v. *Carr*, and nothing that could be said in this brief would enlighten this Court on the principles so clearly expressed and set forth in that case.

In the light of the cases specifically referred to above, and in the light of the argument in the briefs of Mr. Montgomery already filed, it is respectfully, but most earnestly, insisted that the judgments of the courts below are erroneous and should be reversed, and the case remanded for a new trial, at which the defendants shall be permitted to show that the pretended patent under which the plaintiff asserts title is absolutely null and void, and does not, and cannot, operate as a conveyance of any title whatever.

It is not deemed necessary to refer to and explain *seriatim* all of the many decisions cited by counsel for the defendant in error in support of the position taken by them in this case. None of them are believed to have any application

to the questions involved herein; or, if they have any bearing on the case at all, they are not in conflict with any of the propositions which we have endeavored to present to the Court and which are relied on by the plaintiffs in error for a reversal of the judgment below.

The question of survey of the alleged grant prior to the issue of the pretended patent, and the facts in the record, are fully covered by the briefs of associate counsel, and will not be further discussed.

Upon the whole record, and under the law of the case, a judgment of reversal is confidently asked.

Respectfully submitted.

HARVEY M. FRIEND,
Counsel for the Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

C. S. THOMPSON ET AL.,
PLAINTIFFS IN ERROR,
v.
THE LOS ANGELES FARMING AND MILLING COMPANY.

No. 87.

In Error to the Supreme Court of the State of California.

PETITION OF PLAINTIFFS IN ERROR FOR A REHEARING.

To the Honorable the Judges of the Supreme Court of the United States:

Upon examination of the decision of this Honorable Court in this case, announced by Mr. Justice McKenna on the 7th of January, 1901, plaintiffs in error most respectfully believe that in said decision there is error of law; and that, therefore, the alleged errors complained of should be presented to the Court. Wherefore, they most

respectfully petition this Honorable Court to grant a rehearing of the cause on grounds hereinafter set forth:

First. The decision of this Honorable Court is believed to misapply the doctrine of the case of *Beard* v. *Federy*, 3 Wall. 478.

Second. The decision is also believed to misapply the doctrine of *More* v. *Steinbach*, 127 U. S., 70 thereby, in effect, overruling the earlier decisions of this Court in *United States* v. *Vallejo*, 1 Black, 541, *United States* v. *Workman*, 1 Wall. 745, *United States* v. *Vigil*, 13 Wall. 449, and other cases cited and referred to by counsel for plaintiffs in error in briefs filed in court prior to the hearing.

First. In the decision it is said:

"Plaintiffs in error deny the applicability of *Beard* v. *Federy*, to the case at bar. We think it is applicable."

Counsel for plaintiffs in error have evidently been unfortunate in their presentation of the case, to give to the Court the impression stated in the quotation above. We certainly did not intend to deny the applicability of the *Beard-Federy* case to the case at bar. What we intended to convey to the Court, and what has been our contention from the beginning, was, that the *Beard-Federy* case was a controlling authority in our favor in respect of one of our principal contentions, viz: That, in a suit in ejectment, where the plaintiff had to rely upon the strength of his own title and not on the weakness of that of his adversary, and where the integrity of the patent from the United States and the grant from the foreign government upon which said patent was based was attacked on the ground of its being absolutely void, the trial court, and this Court also, could inquire into the validity of the pre-

tended grant *for the purpose of ascertaining whether there was any jurisdiction in the Board of Land Commissioners to confirm the grant, in the first instance;* and, for this purpose, to investigate and consider the petition that had been presented to the board and all of the other papers of the pretended title to the tract of land for which a grant had been made by the foreign government. That was our contention, and that, it was insisted, and is still insisted, was decided favorably to our contention by the decision in the *Beard-Fedory* case. The question there was as to the validity of the grant to the Bishop of Alemany by the Mexican government; and the plaintiff, in order to recover, had to show that his title was good. In order for the Court to determine the character and validity of the title set up by the plaintiff, it had to inquire into the validity of the grant in the first instance; and the object of this inquiry was to determine *whether the board of land commissioners had jurisdiction of the claim which had been presented to it for confirmation.* In that case the Court, after investigating the facts mentioned, determined that the board *did* have jurisdiction, for the reason that the grant to the Bishop was such a grant as the proper authorities had the right to make under the law. But, as pointed out in the briefs filed on behalf of the plaintiffs in error, if the Court had found in that case that the grant to the Bishop was without warrant of law on the part of the authorities making it, then the decision must of necessity have been that the board of land commissioners would not have had jurisdiction to consider the claim at all, and their alleged confirmation would not have been of any effect whatever, and the title of the plaintiff in that case would have failed. If such is not the ruling of the case mentioned, then it is impossible in any case to ever controvert the findings of the board of

land commissioners except by an appeal from their decision. It could never be attacked collaterally. In fact, the decision complained of herein, in effect, goes upon the theory that *in no instance* can any collateral attack be made upon a confirmation made by the board of land commissioners. Such a doctrine, it is most respectfully submitted, is directly in the teeth of the decision in the *Beard-Federy* case, and finds no support in any other decision of this Court. The board of land commissioners was a special tribunal created for a special purpose; and to assert that the judgments of that tribunal are not open to a collateral attack is to give to them more efficacy than has ever been given even to the judgments of courts of general jurisdiction. The rule, as we understand it, is that all special tribunals must show jurisdiction affirmatively, and their jurisdiction is never presumed. This is elementary law. Hence, jurisdiction by the board of land commissioners could never be presumed at all; and, in order to be shown, it must appear from the allegations of the petition presented to it that the claim was one growing out of the Mexican or Spanish law, and not a claim made in violation of the law; not a grant made in the very teeth of the law and in direct violation of the statute under which it pretended to have been made.

The case is very much like a proceeding in a Probate Court for letters of administration on the estate of a decedent, where the law specifically declares that the Court shall have jurisdiction only of the estates of persons resident of the county in which the court is situated. Suppose, for instance, that a petition should be presented to the Court for letters of administration on the estate of a person who had lived and died in another county, and whose property was all situated in that county, and the Court should go ahead and grant letters of

administration on such estate, *contrary to the statutes in such cases made and provided;* would it be contended for an instant that such action of the Court would stand for an instant against a collateral attack? Manifestly not; and for the very reason that the Court did not have any jurisdiction in the premises, and the fact of lack of jurisdiction appeared upon the face of the petition which had been presented to the Court for its action and judgment in the premises. So, in the case at bar, the board of land commissioners being a special tribunal, with a limited jurisdiction, must of necessity have been limited to hear and determine only these cases in which it appeared from the allegations of the petition presented to them that the grant was made, *not in violation of the law*, not in the very teeth of the statute of the foreign government, but in accordance with the law and in conformity to the statute authorizing a grant of lands from the Mexican or Spanish governments, as we most respectfully contend the petition in the case at bar does.

Whatever might have been said by the Court in the opinion that was foreign to the point under consideration cannot be considered in any light except as purely *obiter dictum.*

Second. This leads up to the consideration of the case of *More* v. *Steinbach*, upon which the main reliance of the decision complained of seems to rest. The Court in that case proceeded upon the theory that there must have been some special circumstances attending the grant to Poli, else it would not have been confirmed by this Honorable Court on appeal; and, as pointed out in the brief of Mr. Montgomery, the Court was justified in making such an assumption because, in the trial court, in the *More-Steinbach* case, no evidence had been introduced or offered to show that the grant to Poli was without au-

thority of law, as was done in the case at bar, and inasmuch as it seemed to appear that the Poli grant had been confirmed by this Honorable Court on appeal. Now, when the fact is established, as it is by the records of this Honorable Court, that the Poli grant never *was* confirmed by this Honorable Court except by a dismissal of the appeal by the Attorney-General, and the record facts appear, as they do, that in the *More-Steinbach* case no evidence had been offered to show, on the trial of that case, that the grant was invalid and void and that the board of land commissioners did not have any authority to consider and adjudicate and confirm the claim of Poli, then, we say, it is a very different case from the case at bar.

What this Court meant by "special circumstances" attending the Poli grant is thus fully explained; and, it is most respectfully submitted, does not mean anything like it has been construed to mean by the decision herein complained of.

What the decision complained of considers "special circumstances," attending the attempted grant herein, were evidently the fact that the governor of the Californias was in need of money to keep the troops of the United States out of his territory just at the outbreak of the Mexican war; and that, inasmuch as he was endeavoring to raise funds for this purpose, he had a special dispensation from the Supreme Government of Mexico to do with the public domain simply as he pleased, and might, in such an emergency, dispose of any and all of the public domain or of the mission lands in the territory for a money consideration. Now, if these are "special circumstances," within the meaning of the decision of the Court in *More* v. *Steinbach*, we submit most humbly that we fail to so understand it. Those were the ordinary and usual cir-

cumstances attending every grant and attempted grant that was made by the usurper Pico, and they so appear in the cases of *Workman* and *Vallejo* above referred to. In those cases, while the same state of facts was shown in each case, in respect of the raising of funds for the purpose of repelling the American forces, it never occurred to this Court that they were of such a character as to warrant the overthrowing of the statutes of Mexico for the disposal of her public domain or for the disposal of her mission lands. On the contrary, in those cases, the Court held that such facts and circumstances did not repeal the direct provisions of the law relating to the disposal of the public domain or the mission lands; and that, even under such circumstances, the laws relating to the disposal of the public domain and the mission lands were still in force, and had in no way been abridged or their efficacy curtailed or limited in any respect whatever. To repeat, therefore, every one of the so-called "special circumstances" attending the pretended de Celis grant, existed in the cases of the pretended grants in the *Workman* and *Vallejo* cases; and in neither of those cases was there any doubt in the minds of the majority of the Court that they were of any efficacy whatever to authorize an act by the provisional governor (who was in fact an usurper) which was forbidden by the Mexican law.

So that when the decision states that if the papers that were offered on the trial of the cause at bar to show the invalidity of the pretended grant to de Celis had been admitted, they would have shown that the grant was valid, we most respectfully but earnestly submit it is in direct conflict with the decisions of *Workman* and *Vallejo*, and also in direct violation of the decision of the Court in the *Beard-Fedory* case, where the authority of these cases was not only *not* questioned, but was directly

affirmed and relied upon to show that the pretended grant to the defendant in that case was of the same character as those in the cases mentioned, and was therefore void absolutely.

Again, the decision complained of states that "there is nothing in either of these papers (the petition for confirmation and the decision of the board) which show that exceptional circumstances with reference to the sale to de Celis did not exist."

This, it is submitted, shifts the burden of proof, and overturns the well settled rule of law above referred to, that jurisdiction in a special tribunal to hear and determine causes is not only *not* to be presumed, but must always be shown affirmatively upon the face of the petition that is presented for the judgment of such special tribunal. It goes upon the theory that the jurisdiction of the board is to be presumed unless the contrary be shown; whereas, the correct rule of the law is that the jurisdiction must be shown affirmatively and will never be presumed.

Wherefore, for the foregoing reasons, plaintiffs in error respectfully pray this Honorable Court to grant them a rehearing of said cause.

HARVEY M. FRIEND,
Counsel for Plaintiffs in Error.

I, Harvey M. Friend, counsel for the plaintiffs in error herein, do certify that, in my judgment, the foregoing petition for rehearing is well founded, and that the same is not interposed for delay.

HARVEY M. FRIEND,
Counsel for Plaintiffs in Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

C. S. Thompson et al.,
Defendants and Appellants,
v.
Los Angeles Farming and Milling Company,
Plaintiff and Appellee.

BRIEF FOR PLAINTIFF AND APPELLEE.

Explanation to the Court.

We are informed by the clerk of this court that the hearing of this case will probably be reached in April, 1900; that the appellants have deposited with him twenty-four copies of the record as printed for the use of the Supreme Court of the state of California in this action; that the clerk adopts the same, and will print such additional matter as is necessary, when the money estimated as necessary to do such additional printing is furnished. We have not received a copy of the record upon which this case

will be heard, here, but we understand that the additional printed matter will consist of petition for writ of error, assignment of errors, citation, proof of service thereof, return of clerk thereon, and writ of error.

Such being the case, although we have not been served with the record on appeal here, and have not had the benefit of appellants' brief, we prefer to have our brief on file when the case is called, and as the record may not be printed and filed in time for us to prepare brief after service of record on us, and as we will probably only desire to refer to the assignments of error in the additional matter printed, we will set out in full in our brief the assignments of error and make our references to the folios of transcript on record, as used in the court below, and when we have to refer to the assignments of error, will refer to same as set out here.

Statement of Case.

This is an action in ejectment brought by the appellee against the appellants and many other defendants, in the Superior Court of the county of Los Angeles, state of California, to recover possession of a portion of the rancho ex-Mission San Fernando, situated in said county of Los Angeles. Judgment was rendered in the Superior Court for the appellee, and an appeal taken by the defendants and appellants here to the Supreme Court of the state of California, and judgment was affirmed.

Los Angeles Farming and Milling Co. *v.* Thompson, 117 Cal. p. 594.

We print the decision in this case in full as an appendix to this brief. [See appendix.]

The complaint contains allegations looking to equitable relief. [Tr. fols. 4-36.] The latter feature of the pleading becomes immaterial in view of judgment rendered. [Tr. fols. 107-116.]

While there were many defendants to the action, the judgment has become final as to all of them except C. S. Thompson, Joseph Mazet, Rose D. Mosher, F. N. Culp, Henry C. Vincent, R. J. Tarbell, John J. Shore, I. B. Cox and Elwin G. Carter, appellants here, who sued out writ of error to this court. [See petition for writ of error, page 298, folio 902, of record.]

The assignments of error relied upon by appellants are as follows:

1. "Your petitioners further represent that the judgment of this court was erroneous in sustaining the decision of the trial court in holding the said patent from the United States to Eulogio de Celis, dated January 8th, 1873, was conclusive of the case and cut off defendants in the trial court from introducing testimony to show its validity.

2. "The court erred in refusing to allow defendants in the trial court to introduce the petition of said de Celis before the board of land commissioners for the confirmation of his claim to the land, together with copies of the grant from Governor Pico to him, and the decree of confirmation by the board of the claim with the opinion of the board of its validity.

3. "The court erred in refusing to allow defendants to prove by such petition and by such alleged grant that de Celis did not claim such lands or any part thereof by virtue of any right or title derived from the Mexican or Spanish government.

4. "The court erred in affirming the action of the trial court in instructing the jury to find a verdict for the plaintiff.

5. "The court erred in rendering a judgment of affirmance of the judgment and order of the trial court in favor of the plaintiff when it should have rendered a judgment of reversal in favor of the defendants in that court. Reference is hereby made to the record of said case for further particulars bearing on this petition and these assignments of error."

The answer to one of these propositions answers all of them, and the fact established at the trial of this action in the trial court must necessarily be briefly set out here in order properly to apply the authorities cited by us.

Facts Established at Trial.

Appellee's title is based upon a Mexican grant for which a patent was issued by the government of the United States to Eulogio de Celis. [Tr. fol. 5.] The instrument is here set out in full. It is in the usual form, duly signed by the president. [Tr. fols. 118-183.] After the issuance of this patent a suit was brought in the then District Court of the Seventh Judicial District of California. [Tr. fols. 183, *et seq.*] A judgment in partition was rendered therein which purported to allot the San Fernando ranch upon a survey made by one Reynolds. By that decree there was set apart to the San Fernando Farm Homestead Association, appellee's predecessor, the tract of land described at folios 191, *et seq.* This is, save as to twelve thousand acres excepted from the east end of the same tract, the same property described in the complaint. [Tr. fols. 8, *et seq.*] It was also shown that the appellee, by *mesne* conveyances, succeeded to whatever title passed by the decree of partition; that the land described in the complaint is the same property set aside to the San Fernando Farm Homestead Association, subject to the foregoing exception, and that that association paid to Pico, $115,000.00 in 1869, for an undivided one-half of the San Fernando rancho; [Tr. fols. 313-315.] It will also be noted that the Encino ranch—an independent grant—is not claimed by plaintiff. It thus appears that there was a partition of the San Fernando rancho by the District Court of Los Angeles county, and that the plaintiff's predecessor in interest, by that decree, was awarded the land described in the

complaint. A number of exhibits were filed in the record, and among them many maps so large that they could not be bound into the transcript on appeal. We are not aware whether the appellants have filed in this court copies of these maps; but if they have not, we will ask permission of the court to furnish copies thereof before the case is submitted. The Hancock survey, often alluded to, is that upon which the patent issued. The Reynolds survey, upon which the partition was made, is the re-location of that made by Hancock. (See report of Reynolds, Tr. p. 79, fols. 229, *et seq.*) The decree shows that the court making it dealt with the San Fernando grant. The Reynolds survey is displayed on the document marked "16,240, L. A. F. & M. Co. *v.* W. H. Hoff *et al.* Plaintiff's Exhibit 33; filed May 13, 1892;" also marked "16,393, L. A. F. & M. Co. *v.* Thompson; Plaintiff's Exhibit 29; filed April 5, 1895." (This double filing is explained by the fact that this map was introduced in a former trial involving the same issues made on the complaint herein and determined finally by the decision of this court [see 34 Pac. Rep. 518] already alluded to.) In that litigation every point now made against the appellants here was made against the defendants in that action. If this court will examine this exhibit, which we will hereafter call the Reynolds map, it will be observed that the tract described in the complaint and in the partition decree appears clearly thereon. From this tract there must, as stated *supra*, be excepted the Encino rancho, and 12,000 acres constituting the east part thereof. Thus the complaint description [Tr. fol. 8] accords with the partition decree description. [Tr. fol. 191.] The point of commencement is the northwest corner of the Rancho Providencia which, it will be observed, is located in the southeastern part of the Reynolds map. This corner is Station "2" of the Rancho San Fernando, and "3" of the Provi-

dencia. From this point the description runs to a point marked on the west line of the plat "Station in Md., 493." Thence the line proceeds by various courses, until it reaches the western exterior boundary of the San Fernando ranch. Thence the course changes and runs southwesterly until it reaches the northwestern corner of the Rancho El Escorpion, near the point marked "Leonis." [Tr. fols. 10-193.] (See western line of Reynolds map.) From there the boundary follows the north, east and south lines of the Escorpion to the point at the southwest corner of the Escorpion marked "Post in Mound, S. F. 37." [Tr. fols. 11–94.]

Thence the survey follows the line between the rancho Las Virgenes to the point marked on the map "Blazed White Oak, S.F. 39." [Tr. fols. 12-195.] Thence along the southerly line indicated upon the plat to which we have referred [plaintiffs' exhibit 29] and at a point marked "Sandstone Rock, S. F. 41" on high point of mountain is found a connecting corner of the rancho San Vicente y Santa Monica. [See Reynolds' map.] The survey then follows along the line indicated upon the Reynolds map to the place of beginning. It will be observed that the premises thus described, including the 12,000 acres, are marked upon the Reynolds' map "San Fernando Farm Homestead Association." The attention of the court is called to the rancho El Encino [a patented grant] which is correctly located upon the Reynolds' map immediately south of the words "San Fernando Farm Homestead Association." A map of this grant is in evidence [plaintiff's exhibit 28.] The appellants are nomads, not possessed of any right, and compelled to rely upon the supposed weakness of appellee's title, not upon the strength of their own. Appellant Mosher, by her answer, claims that in October, 1891, she entered upon 160 acres of the land demanded by

the plaintiff, but she asserts that this land was outside of the grant. She avers that she was then, and still is, a citizen of the United States, over 21 years of age, and a qualified homesteader; that her entry and settlement was made in good faith, and that she filed with the register and receiver of the local land office her declaration of homestead, and she denies that the lands upon which she settled are within the boundaries of the grant confirmed to de Celis and denies appellee's title. [Tr. fols. 90-92.] She makes no allegation as to whether or not she has exhausted her homestead right. The answers of the other appellants were in same form. [Tr. fol. 849.]

In order to locate the uncertain possession of this person who did not volunteer to take the stand, appellee produced an affidavit and application tendered by her to the land office from which it appeared that she claimed the right to settle in the northwest quarter of section 31, township 2 north, range 16 west, San Bernardino meridian. The location of this property appears from an inspection of map marked plaintiff's exhibit 30. The quarter section thus identified is northeast of the northeast corner of the Rancho El Escorpion and south of the north boundary of the tract which we have already described as the "San Fernando Farm Homestead Association."

At this point it may be well to locate the position of each one of the appellants appealing.

There is no record of any filing by F. M. Culp, nor did he testify. Witness Gray says that Tarbell entered north of the Encino, and that Culp was south on the adjoining quarter section. For the location of Tarbell see map marked plaintiff's exhibit 30, northeast of and near the Rancho El Encino. Mr. Gray points out the situation of each of the defendants. [Tr. fols. 348 *et seq.*] The

description given by this witness is sufficient to fix the point of attack of the claimants upon either of the ranch maps, but it will facilitate the investigation to refer to exhibit 30 already mentioned. The Tarbell application was for the southeast quarter of section 22, township 1 north, range 15 west, San Bernardino meridian. [Tr. fol. 367.] We have already indicated this upon exhibit 30. John J. Shore applied for land lying across the stage road appearing upon exhibit 30, easterly of the Rancho El Encino. His application described it as the southeast quarter of section 22, township 1 north, range 15 west, San Bernardino meridian. [Tr. fol. 365.] [Testimony Shore, fol. 316.] The stage road mentioned appears on the Reynolds' map and is there marked "Overland Stage Road."

Henry C. Vincent attempted a filing upon the northeasterly quarter of section 20, township 1 north, range 15 west, S. B. M. He sought to locate within a mile and a half of the buildings at the sheep ranch on the stage road, and a mile east of the Encino. [Gray Tr. fol. 351–2.] The court will notice on the Reynolds' map the words "Sheep Camp." Vincent was between that point and the eastern ranch line.

Edwin Carter attempted to file on the northeastern quarter of section 16, township 1 north, range 16 west, S. B.M. [Tr. fol. 369], due west from the Rancho El Escorpion. [See plaintiff's exhibit 30.]

Joe Mazet intruded upon the left of the road near the Encino. He did not tender any filing. In fact, there was no evidence that he was a bona fide claimant. The same may be said of all the appellants.

Defendant Cox filed an application for section 31, township 2 north, range 16 west, S. B. M. [Tr. fol. 364.] There is no dispute that all of sections 14-23 are within the exterior boundary lines of the San Fernando. [Tr. fol. 778.] Each of the appellants'

pretended settlement is indicated upon exhibit 30, which is based upon the Reynolds' map referred to in detail by witness Ensign and also by Lankershim and Van Nuys. There is a map referred to especially in the testimony of the witness Grove, who is the so called expert of defendants, which is marked "plaintiff's exhibit 2." This is called a comparative map, and contains a platting without any reference to natural objects of the Hancock, Ensign and Reynolds surveys. Its author, Grove, is the litigation promoter of appellants. He never surveyed the San Fernando boundary except upon the Robinson Crusoe plan. Exhibit 2 was manufactured by this witness. By referring to this plat and comparing it with exhibit 30, it will become obvious that it does not make the slightest difference so far as these appellants' are concerned, whether the Hancock, the Reynolds, the Ensign or the Grove survey is accepted as the true line of the San Fernando grant. In any case, the appellants are within the limits of the grant. An inspection of the plat proves this and the witness Grove concedes it. [Tr. fol. 777.]

The foregoing illustrates the title upon which the appellee relies, and which is unassailed as far as the evidence is concerned. Appellee did not, however, rest upon its paper title alone.

C. A. Ensign was examined [Tr. p. 142, fols. 420, *et seq.*] Mr. Ensign is a civil engineer and surveyor. He surveyed the exterior boundary of the San Fernando rancho throughout its entire length with the patent, Hancock and Reynolds' survey notes before him [Tr. fol. 420], and located the premises in accordance with our contention, and he also certified that sections 14–23, which include defendant's alleged claims, are all within the boundaries of the San Fernando as patented, and that all the lands lying within the black line, which mark the exterior

boundaries of the rancho as shown in document marked plaintiff's exhibit 30, are within the patent boundaries. Mr. Ensign's cross-examination was very lengthy, but he sustained himself in such a manner as to leave nothing to be desired by respondent.

There is not a word in the record from one end to the other which, in any degree, conflicts with the material statements of Mr. Ensign. There may be a doubt as to the proper location of the ranch line at the southwest corner, though the uncontradicted testimony of Pico ought to settle even that contention. It was because of this supposed uncertainty that the appeal was taken in this case by Hoff and others, appellants in this action. [34 Pac. Rep. 518.] But there is no survey made by anybody and no suggestion upon the present trial which does not identify each and all of these appellants within the admitted exterior lines of the Hancock survey and the patent. The testimony of the appellants is meager. They kept out of the way. None of them took the stand for the defense. They studiously avoided subjecting themselves to cross-examination. The only witnesses who were examined by the appellants were P. Higgins [Tr. fol. 750], E. Rocha [Tr. fol. 758], C. C. Grove [Tr. fol. 759]. Higgins says that he has occupied land which extends a half or a quarter of a mile north of the Reynolds' line; that he has held to what he claimed to be the grant line. [Tr. fol. 752.] That he does not claim to run down into the San Fernando valley, but holds up to what he supposes the Hancock line to be; that he knows the old Los Angeles and Ventura stage road, which runs through the San Fernando grant; that he is half a mile, more or less, south of that road; that there is probably a quarter of a mile of section 35, within which his claim is situate north of the Hancock line; that neither of the persons to whom

he alludes holds north of the Hancock line [Tr. fol. 756.] No witness disputes the right and fact of appellee's possession of the grant.

By referring to the Reynolds map [Plaintiff's Ex. 29], it will be seen that Higgins has never been upon any of the property claimed by either of the appellants. The Hancock line according to the Grove map, [Plaintiff's Ex. 2] runs easterly and westerly, or greatly south of the Rancho El Encino, and but little north of the Reynolds line. Higgins does not make any pretensions north of the Hancock line. There is no room for the pretense that there has been any interruption of appellee's possession as far as the lands in controversy are concerned, and no interruption worthy of the name, unless it be as regards the insignificant fragment claimed by Higgins.

E. Rocha, a witness called on behalf of the appellants, said that in 1879, he took up a government claim near the Cahuenga Pass, and that he was ejected by Lankershim, the agent of the appellee. On cross-examination he also says that his brother-in-law, Alvarez, was ejected in a suit brought by the present appellee. [Tr. fol. 759.]

Then C. C. Grove, the so-called expert, who testified about a boundary which he never investigated, explained his map already referred to as plaintiff's Ex. 2. [Tr. fol. 250.] The witness platted each of the surveys referred to without any reference to monuments. He never surveyed the original outside line. [Tr. fol. 764.] He made nothing but a theoretical examination, and yet it is upon this person that counsel relies to show that the Hancock lines would not close. At folios 767, *et seq.*, the witness attempts to show various discrepancies in the surveys, all of which are supposed to be proven by inaccuracies brought out by his platting of the surveys without reference to monuments or to possible

errors in courses and distances. The witness says that he does not *think* that a person could go on the ground with Reynolds' map and find the boundaries [Tr. fols. 774,] but he does not know anything about it. He is merely guessing. It appears from the cross-examination of Grove [Tr. fols. 775, *et seq.*] that he has been endeavoring to dispute the possession of the occupants of the San Fernando grant.

But as already noted, he admits that the appellants, of whose possession he is cognizant, were mere intruders, even upon his own theory. [Tr. fols. 777, 779.] He refers to the Leonis house. [See point marked "Leonis" on Reynolds map, plaintiff's Ex. 29; said point being almost due west of the northwest corner of the Rancho El Escorpion, located upon the west boundary of the said exhibit.] Then the witness proceeds, "If my plat of the Hancock survey is correct the Leonis house would be within the boundaries of the Escorpion ranch as patented." [Tr. fol. 780.] The Los Angeles and Ventura road is correctly delineated upon plaintiff's Ex. 30. [Tr. fol. 781.] He also testifies that according to his location of the Rancho Escorpion, under the Hancock survey, the house of Leonis would be within the limits of the San Fernando or the Escorpion, whereas the patent map of the Escorpion shows that it is outside of the exterior limits. [Tr. fol. 794; plaintiff's exhibit 28.] So that according to Grove's idea the patent lines of the Escorpion must be moved eastward. The patent of the Escorpion agrees exactly with the San Fernando patent [Tr. fol. 804,] even according to map plaintiff's exhibit 6.

Appellants Vincent, Shore, Tarbell, Mazet, Carter, Culp and Cox, if placed according to the plat upon which their names are written, would all be within the patent boundary. [Tr. fols. 804-5.] The witness testifies against the Hancock and Reynolds surveys merely upon opinions without foundation. [Tr.

fol. 811.] According to Grove errors in courses and distances invalidate a patent.

It is impossible adequately to describe Mr. Ensign's verification of the survey lines without following his testimony. Mr. Ensign's location of the United States coast survey [Tr. fol. 461] is important and convincing. It is needless, however, to spend time upon the precise situation of the exterior lines of this grant, because upon any theory and in any aspect whatever, the particular location of the appellants and the special pieces of property which they claim are within the grant. As to whether the judgment awards respondent portions of the San Fernando which the appellants do not now claim, we will not stop to inquire. Even if the decree extends beyond the unlawful pretensions of appellants, they are not injured. No harm can happen if they are adjudicated to have no interests in lands which they do not pretend to own, but over which they passed in their pursuit of the property of another. We could not, at the time of the institution of the suit, definitely fix their possessions. Even the answers filed are not candid in this respect. If we take plaintiff's exhibit 2 [the Grove map], upon which appellants rely, we will find that according to his location of the Hancock survey, the south line of the San Fernando and the north line of the rancho San Vicente y Santa Monica do not accord, and appellants' contention is that there are public lands between these grants; but the United States official surveys prove otherwise. The patent of the San Vicente y Santa Monica shows a common line for the south boundary of the San Fernando and the northern line of the San Vicente y Santa Monica.

We will briefly refer to some of the appellee's exhibits.

No. 28 is the rancho El Escorpion. The plat is taken from the patent of the grant. If appellants'

theory is correct this patent is wrong. Grove can move about patent lines with coolness and dispatch. A blue pencil and a piece of paper is sufficient equipment for such service.

We then have plaintiff's exhibit 23, which is an official plat of the rancho Providencia, located along the south part of the eastern line of the Reynolds' map. [Plaintiff's exhibit 29.]

Then the plat of the rancho Tujunga. This grant is located along the east line of the San Fernando. [See "Tujunga" on east of plaintiff's exhibit 29.]

Plaintiff's exhibit 27 is a government survey of T. 3 N., R. 15 W., S. B. M. This tract lies immediately outside of the San Fernando and accords with the description for which we contend. [See Reynolds' map, plaintiff's exhibit 29, and particularly the northeast part thereof, immediately south of the words "San Fernando mountains," with which the lines of plaintiff's exhibit 27 coincide.]

Plaintiff's exhibit 25 represents the government survey along that part of the San Fernando line immediately north of the rancho Tujunga already referred to.

Plaintiff's exhibit 26 represents the line of the government survey which separates T. 2 N., R. 15 W., S. B. M., from the rancho San Fernando.

Plaintiff's exhibit 24 further shows the connection of the San Fernando with the rancho Providencia and the lands lying immediately north thereof. [See southwest corner of Reynolds' map, plaintiff's exhibit 29.]

Plaintiff's exhibit 6 we have already cited. It is a plat of the rancho San Fernando, duly certified, from the office of the surveyor-general of California, and entirely sustains plaintiff.

The same may be said of plaintiff's exhibit 1. This exhibit shows that the rancho San Vicente y Santa Monica abuts upon the San Fernando on the

south and effectively negatives appellants' contention that there is any public land between those two points. This exhibit is a copy of the patent map as appearing on the records of the county recorder.

Plaintiff's exhibit 36 is a plat of the rancho San Vicente y Santa Monica, and the northern line thereof accords with the southern line of the San Fernando. This is an official plat taken from the map of record in the county of Los Angeles.

Plaintiff's exhibit 6, already referred to, is a portion of the rancho San Fernando upon which the various government sections are platted, and according to this map all of the appellants involved are within the patent limits of the grant.

From these facts the conclusion is inevitably deduced that the appellants here appearing are all upon the patented San Fernando grant, within the limits of the territory for which the appellee holds the paper title, and that appellee is indisputably entitled to recover because it is the owner of the premises invaded.

Some of the exploits of the witness Grove in connection with the San Fernando ranch appear in Lacey *v.* Porter, 103 Cal. 597.

Appellants' Entry and Appellee's Possession.

R. J. Tarbell, who is one of the appellants, testified upon being called by appellee (he chanced to be in the courtroom and was put upon the stand by appellee), that he belonged to an organization known as the San Fernando Protective Association. There were about a hundred members. These people intruded upon the ranch. The witness and his brother selected a place a little east of the Encino rancho, near the north corner. The object of the association was to enable the members to go on the land in controversy and to maintain a settlement.

Appellants Vincent and Carter were members of the association. [Tr. fols. 308–9.] The witness says that he understood that the object of the association was to get land that was held under fraudulent titles. He knew at the time he entered the land that it was claimed by the Los Angeles Farming and Milling Company, and that they were farming it at the time. It was plain to anybody. "I didn't go over the whole of it, but I knew they were farming part of it, but don't know how much. I know that they were farming where I went."

The facts certified to by this witness are not disputed by any one. The so-called *bona fide* homesteaders did not dare to take the witness stand. Not one of them swore to anything indicating good faith.

It appears from the testimony of Lankershim [Tr. fol. 326] that he acted as superintendent of the southern half of the San Fernando grant. He took the Reynolds' or partition map for his guidance, and watched the boundary lines [Tr. fol. 327.] Sometimes there were trespassers [Tr. fol. 328.] There was only one man in all the time that Lankershim acted as superintendent, who persistently maintained that he was going to settle, and he was ejected.

"I maintained absolute possession of the whole ranch during the time that I was in charge." [Tr., fol. 329.]

The testimony of this witness is important, and we request the court to peruse the same.

Mr. Lankershim was superintendent continuously for seven years. [Tr. fol. 325.] At folio 332 the witness explains the cultivation of the ranch; shows that it was farmed extensively, the amount actually in cultivation reaching thirty thousand acres. Wheat and barley were raised. The wheat was turned into flour by the appellee. [Tr. fol. 333.] There were about twenty thousand acres in grain in

1891, when the appellants entered. [Tr. fol. 334.]

The cross-examination of this witness is important, and shows exclusive possession without substantial interruption. [Tr. fols. 336–345.]

John J. Shore, one of the appellants, was also called and located his claim, as already stated, at the place indicated on plaintiff's exhibit 30, the same being there marked "John J. Shore."

The testimony of Mr. Gray [Tr. fols. 348–357] is to the effect that the appellants "jumped" upon the lands in the actual occupancy of the appellee. [Tr. fol. 354.]

"I could swear that there was stubble growing where every one of these people were located, because there wasn't anybody located in any place but what there was stubble growing. Where they had cabins they were set down in the stubble," etc. "I was there in September, October, November and December, and the stubble was that fall's stubble." [Tr. fol. 354.]

At the time that Mr. Gray saw the land the appellee had some 120 men in its employ, and six or seven hundred head of stock grazing on the ranch.

Mr. Lankershim, upon being recalled, says that he kept possession of the San Fernando up to the line of the Rancho San Vicente. This grant has been already alluded to, and the northern line of the San Vicente appears on plaintiff's exhibit 36, and is the common boundary of the San Vicente and San Fernando. See also plaintiff's exhibit 6.

R. Pico was an important witness. His testimony can be found at folios 402, *et seq.* He resided upon the San Fernando rancho from the year 1848 until a year before the trial. Was there when the partition was made, and is familiar with the boundaries of the rancho. His testimony is attacked by appellants upon the ground that he failed to remember the particular date when the survey was made. Mr.

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Pico's testimony corroborates the theory upon which Mr. Ensign located the line. There are some differences between the calls of the Hancock survey and that of Reynolds. For instance, Mr. Hancock calls a white oak a live oak twice, but Pico, who was present, identifies the actual tree. [Tr. fol. 405.] Witness also testifies to the continuity of the possession by Lankershim and Van Nuys, both of whom, it must be remembered, are representatives of the corporation appellee here.

The cross-examination of Mr. Pico did not lessen but rather increased the force of his evidence, and served to strengthen appellee's case. Pico pointed out this tree to Mr. Ensign, the surveyor, and a photograph of the tree made by surveyor Jackson [Tr. fol. 423] was filed as plaintiff's exhibit 19. [Tr. fol. 424.]

I. N. Van Nuys, the president of the appellee, was called. [Tr. fols. 369, *et seq.*] He testifies to the possession which was enjoyed by the appellee and its predecessors for years prior to appellant's entry. The witness locates the improvements upon the ranch [Tr. fol. 374]. For eight or nine years the appellee has farmed from ten to thirty thousand acres on the grant. [Tr. fols. 372-3.] Prior to the cultivation the ranch was used for pasturage purposes.

"There was no part that was not used by the appellee for some purpose." [Tr. fol. 375.]

Where "Henry C. Vincent" is marked upon plaintiff's exhibit 30, the land was cultivated. [Tr. fol. 381.] All of the five sections lying immediate north of the line marked upon plaintiff's exhibit 30 "T. N., R. 1 W." was cultivated in 1891 in wheat, with the exception of a small piece which they planted to barley. No person other than the San Fernando Farm Homestead Association or the appellee has held possession of any part of the ranch for any

length of time since 1871. Occasionally some one would go into the cañons for wood, but they were removed. No one has held possession against the appellee. [Tr. fols. 384–5.]

Mr. Van Nuys here describes the peculiar and bold intrusion perpetrated by appellants. [Tr. fol. 356.] At all times since 1880 the Farming and Milling company has paid all the taxes on the land and it has been assessed by sections. Prior to 1880 the San Fernando Farm Homestead Association paid the taxes and the land was assessed to it. Appellee has always claimed under the Reynolds' or partition map and has always maintained possession against intruders upon those lands. [Tr. fols. 386-7.]

The witness, on cross-examination, shows that suits were brought upon several occasions to maintain appellee's possession and the appellee was always successful. [Tr. fols. 391 *et seq.*]

The testimony of H. C. Wiley [Tr. fols. 315 *et seq.*] is likewise important. He says that he lived on the San Fernando rancho from the 1st day of August, 1858, and had charge of the property for Gen. Andreas Pico, who claimed it all. The claim made by Gen. Pico and by this witness was so co-extensive with that of Pico's successors, including the appellee. Wiley held to the top of the mountain on the south. [Tr. fol. 318.] No one but Andreas Pico and his tenants occupied these premises. [Tr. fol. 319.] Some parties occasionally entered, but they left upon demand and without suit brought. [Tr. fol. 321.] The south line of the San Fernando, which is referred to by this witness, is about two miles south of the Encino. [Tr. fols. 324-5.] There is no question as to the correctness of the Encino location.

E. T. Wright testifies that he acted with Ensign in making the survey heretofore referred to; that he

calculated the area contained in the grant; that the patent area was 121,396.13; that the area included within the Ensign surveys sums up 121,311.10 or 85.03 acres less than the patent area. Rather a remarkable result, considering the rough country, and the extent of the surveys.

The appellants introduced a judgment roll in a suit brought by this plaintiff against Foster. [Tr. fol. 822.] The plaintiff recovered judgment within about a month after the action was instituted. Appellants also introduced the record in another suit by the same plaintiff against one Kelsey, *et al.* [Tr. fol. 823.] The evidence showed that after the complaint was filed the defendants therein left. [Tr. fol. 825.] There are also a number of other exhibits which do not appear to be essential to a decision of this case. It might be well, however, to mention the map of the Rancho Providencia, [Tr. fol. 681] which adjoins the San Fernando on the southeast. See also exhibits Tr. fol. 683, *et seq.*, all of which are contiguous to the San Fernando, and wherever such contiguity appears the lines of the Ensign survey coincide. The only survey proven on this trial was that to which Ensign and Wright testified. Grove made no survey whatever of the boundaries of the ranch, and wherever he advances a theory inconsistent with the testimony of Ensign he is flatly contradicted by the record. He cannot upset a record, even though he should double his theories and his emphasis.

After the evidence was all in the court instructed the jury to find for the appellee. [Tr. fol. 826.] A verdict was rendered accordingly. A motion for a new trial was made and denied. Defendants, who are appellants here, appealed to the Supreme Court of the State of California, and the judgment was affirmed. [See appendix for opinion.] The appeal was heard upon a "Transcript on appeal" including

pleadings and statements on motion for new trial. Which transcript in the main constitutes the record here.

Law of the case.

I.

THE APPELLEE'S TITLE, BEING BASED UPON A UNITED STATES PATENT, CANNOT BE SUCCESSFULLY ASSAILED BY THE APPELLANTS, AND THE VARIOUS AVERMENTS IN THE ANSWER AND THE ATTEMPTS MADE AT THE TRIAL TO ATTACK SUCH PATENT AND THE SURVEY THEREIN INCORPORATED CANNOT PREVAIL.

Before discussing the law which must govern your decision in this case, we call your honor's attention to the fact that the defense attempted to be made by the appellants herein, is a *collateral* and not a direct attack upon the United States Patent which is the source of appellee's title.

We have already seen that appellee has succeeded to that portion of the San Fernando patented lands which were set apart in the decree of partition to the San Fernando Farm Homestead Association with certain exceptions not important at this point. The patent is found Tr. p. 42, *et seq.*, and is in the usual form. This document is conclusive as to the validity of the grant referred to and also as to the survey thereof.

In Beard *v.* Federy, 3 Wall. 478-492, it was said, in speaking of a patent issued upon a Mexican grant:

"By it the government declares that the claim "asserted *was valid under the laws of Mexico*; *that it* "*was entitled to recognition and protection* by the stip- "ulations of the treaty, and might have been located "under the former government, *and is correctly* "*located now so as to embrace the premises as they are* "*surveyed and described.* As against the govern-

"ment, this record, so long as it remains unvacated, "is conclusive. And it is equally conclusive against "parties claiming under the government by title "subsequent."

See, as supporting this view, and as applicable to this suit:

West *v.* Cochran, 17 How. 403;
Foster *v.* Mora, 98 U. S. 425;
Smelting Co. *v.* Kemp, 104 *Id.* 640;
More *v.* Steinbach, 127 *Id.* 70;
Craigin *v.* Powell, 128 *Id.* 691;
Knight *v.* The United Land Ass'n, 142 *Id.* 161;
Chandler *v.* Calumet & H. M. Co., 149 *Id.* 79;
Barden *v.* N. P. R. Co., 154 *Id.* 288;
Lake Superior Ship Canal R. I. Co. *v.* Cunningham, 155 *Id.* 354;
Stoneroad *v.* Stoneroad, 158 *Id.* 240;
Russell *v.* The Maxwell Land Grant Co., *Id.* 253;
McCormick *v.* Hayes, 159 *Id.* 332;
Manning *v.* San Jacinto Tin Co., 7 Saw. 418; 9 Fed. Rep. 729;
Mora *v.* Nunez, 10 Fed. Rep. 640;
Houston *v.* San Francisco, 47 *Id.* 340;
U. S. *v.* San Jacinto Tin Co., 10 Saw. 639;
Waterman *v.* Smith, 13 Cal. 373;
Moore *v.* Wilkinson, *Id.* 478;
Stark *v.* Bennett, 15 *Id.* 363;
Doll *v.* Meador, 16 *Id.* 324;
Teschemacher *v.* Thompson, 18 *Id.* 11;
Leese *v.* Clark, *Id.* 535; 20 *Id.* 423;
Ward *v.* Mulford, 32 *Id.* 365;
Durfee *v.* Plaisted, 38 *Id.* 80;
Chipley *v.* Farris, 45 *Id.* 539;
Cassidy *v.* Carr, 48 *Id.* 339;
Cruz *v.* Martinez, 53 *Id.* 239;
Thompson *v.* Doaksum, 68 *Id.* 597;
People *v.* San Francisco, 75 *Id.* 389;

Adair *v.* White, 85 *Id.* 313;
Valentine *v.* Sloss, 103 *Id.* 220;
Irvine *v.* Tarbat, 105 *Id.* 243;
Dreyfus *v.* Badger, 108 *Id.* 58;
L. A. Farming & Milling Co. *v.* Thompson, 117 Cal. 594;
Saunders *v.* La Purissima Gold Mining Co. *et al.*, 125 Cal. 159;
Wormouth *v.* Gardner, 125 Cal. 316.

II.

IF IT IS ASSUMED, CONTRARY TO THE FACT, THAT APPELLEE DOES NOT HOLD THE PAPER TITLE, NEVERTHELESS, APPELLANTS' ENTRY AND OCCUPANCY WERE UNLAWFUL AND THE JUDGMENT AND ORDER WERE PROPERLY AFFIRMED IN THE COURT BELOW.

When the appellants, co-defendants, were before the Supreme Court of the state of California [34 Pac. Rep. 518], the following brief opinion was rendered:

"This is an action of ejectment brought against "the defendant, Hoff, and over one hundred others, "to recover possession of the south half of the San "Fernando rancho in Los Angeles county. Upon "the facts shown at the trial we think there can be "no question as to the right of the plaintiff to "recover in this action and the question of error in "the instruction becomes immaterial. The Supreme "Court of the United States in a recent decision has "construed the act of congress of February 25, 1885, "and in effect answered every proposition upon "which the appellants rely here. [Cameron *v.* U. "S., 148 U. S. 301.] The plaintiff has been under "possession under sanction of a judicial decree for "about twenty-five years. Its claim has been made "in good faith and under color of title, while the "defendants are mere naked trespassers. The case

"comes squarely, therefore, within the decision above "referred to and requires no further consideration. "See also U. S. *v.* Brandenstein, 32 Fed. R. 720, and "Rourke *v.* McNally, 98 Cal. 291. We find no error "in the record. Judgment and order affirmed."

In the Hoff case, *supra*, there was as we have already remarked, some ground for the contention that a part of the land claimed by the appellants there was outside of the San Fernando grant. Those litigants asserted a right of possession in the neighborhood of the line of the Rancho Las Virgines. (See southwest corner of the Reynolds map, plaintiff's exhibit 29.) Neither of the present appellants are near that locality. The doubt, if it was such, which existed in the Hoff case, arose with reference to the southwest corner grant as shown by exhibit 29, *supra*, and regarding station "S. F. 39." The entire accuracy, however, of the line delineated upon such exhibit is now proven by the testimony of Pico, who fixes the station clearly and indisputably. [Tr. fols. 402, *et seq.*]

While the appellants here assert that they are qualified homesteaders in certain respects, they rest entirely upon the mere statement of that fact in their answers. Neither of them made any proof of the possession of the statutory qualification required by section 2289 U. S. revised statutes.

It is therefore obvious that the former decision [34 Pac. Rep. 518] is directly in point. But if appellants were duly qualified homesteaders the same result would follow, The laws of the United States do not authorize an entry upon the actual possession of another for the purpose of making a settlement though made by one qualified to purchase from the government, or to acquire a homestead, although such entry is made with the intent to acquire the title in some lawful mode.

Rourke *v.* McNally, 98 Cal. 292;
Peterson *v.* Kinkead, 92 *Id.* 377;
Hosmer *v.* Dugan, 56 *Id.* 257;
McBrown *v.* Morris, 59 *Id.* 74;
Plummer *v.* Brown, 70 *Id.* 547;
Bullock *v.* Rouse, 81 *Id.* 595;
Atherton *v.* Fowler, 96 U. S. 517;
Hosmer *v.* Wallace, 97 *Id.* 575;
Trenouth *v.* San Francisco, 100 *Id.* 251;
Quinby *v.* Colan, 104 *Id.* 420;
Mower *v.* Feltcher, 116 *Id.* 381;
Durand *v.* Martin, 120 *Id.* 369;
Cowell *v.* Lammers, 10 Saw. 252, 21 Fed. Rep. 203.

"A mere intruder cannot enter on a person actually seized and eject him and then question his title or set up an outstanding title in another. * * * If the plaintiff had actual prior possession of the land this is strong enough to enable him to recover it from a mere trespasser who entered without any title."

Haws *v.* Victoria Copper Mining Co., 160 U. S. 303.

It is conceded that appellee was in possession of a part, if not of the whole, of the tract claimed by him. That appellee made such claim under the decree of partition which was based upon the Reynolds map [plaintiff's exhibit 29], and upon various written instruments according therewith, is proven beyond cavil. See testimony of Lankershim [Tr. p. 111, *et seq.*] Van Nuys [Tr. p. 125, *et seq.*] Also statement, p. 107.

If appellee's actual possession had covered a part only of the tract in question, such possession would have been sufficient to warrant this action.

Walsh *v.* Hill, 38 Cal. 482;
Wolfskill *v.* Malajowich, 39 *Id.* 281;
Webber *v.* Clarke, 74 *Id.* 16;
Dodge *v.* Yates, 76 *Id.* 254;

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> "To create a right of pre-emption there must be settlement, inhabitation and improvement by the pre-emptor, conditions which cannot be met when the land is in the occupation of another. Settlement, inhabitation and improvement of one piece of land confer no right to another adjacent to it which, at the commencement of the settlement, is in the possession and use of others, though upon a subsequent survey by the government, it proves to be a part of the same section subdivision. Under the pre-emption laws as held in Atherton *v.* Fowler, the right to make a settlement is to be exercised on unsettled land, the right to make improvements is to be exercised on unimproved land, and the right to erect a dwelling house is to be exercised on vacant land. None of these things can be done on land when it is used and occupied by others."
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> Hosmer *v.* Wallace, 97 U. S. 575.

The transcript is barren of anything indicating lack of good faith upon the part of the appellee. Apart from the stipulation which shows that the San Fernando Farm Homestead Association, plaintiff's predecessor, paid $115,000.00 in 1869 for an undivided half of the San Fernando grant [Tr. fol. 315] we have also Mr. Van Nuys' evidence and that of Mr. Lankershim as to the extensive improvements made, taxes paid, and other moneys advanced in caring for, improving, and bringing the property into productiveness. If they had faith in a patent issued by this government under the responsibilities of treaty obligations, who can blame them?

FURTHER CONSIDERATION OF THE CASE IN VIEW OF CERTAIN POINTS MADE BY APPELLANTS IN THEIR ASSIGNMENTS OF ERROR.

(*a*) It is claimed by assignment of error No. 2 that the court erred in sustaining an objection to the introduction in evidence by appellants of the

original petition of Eulogio de Celis. [See Tr. fols. 692, 718.]

The authorities heretofore cited under point 1 effectually dispose of this contention.

Dolan *v.* Carr, 125 U. S. 618, relied on by appellants in their argument in the court below, has been so often explained that it is not worth while to take up the subject again.

Knight *v.* The United States Land Association, 142 U. S. 161; Barden *v.* Northern Pacific Railroad Co., 154 U. S. 288, and Stoneroad *v.* Stoneroad, 158 *Id.* 240, will suffice.

Appellants seem to forget that the United States Supreme Court in Beard *v.* Federy, *supra*, determined that the patent, not only conclusively fixed the boundaries, but it constituted likewise a governmental declaration of the validity of the grant. The patent must be considered absolutely determinative as to both grant and location unless set aside in a direct proceeding by the government brought in accordance with the principles laid down in U. S. *v.* Throckmorton, 98 U. S. 61, U. S. *v.* Hancock, 133 U. S. 193, and Knight *v.* The U. S. Association, 142 U. S. 161.

The action of the board of land commissioners when it became final by affirmance or dismissal of appeal, was conclusive upon all parties including the government.

Botiller *v.* Dominguez, 130 U. S. 238.

(*b*) The point made by appellants, under assignment of error No. 3, is already answered.

(*c*) Appellants' fourth assignment of error is to the effect that the court erred in instructing the jury to find in favor of appellee. The principles already discussed, and the evidence heretofore cited completely meet this contention.

Not having appellants' brief before us, we do not know what position they will take in argument to

sustain this position. We infer, however, that they will make the same argument here that they did in the court below. There they insisted that there was nothing to inform the court as to whether appellee's right to possession rests on title or prior possession. There will not be any doubt, we think, in view of the record, that this court will hold that appellee should recover on both grounds. If appellee's right to recover on either ground was established to the satisfaction of the court, beyond a doubt, and the showing made by the defendants below, appellants here, was insufficient to establish a defense, then the trial court did not err in instructing the jury to find for the appellee Where the evidence is clearly insufficient to support a verdict in favor of the party against whom the instruction to find a verdict is given, the ruling will be sustained.

Lacey *v.* Porter, 103 Cal. 605.

This case grew out of the efforts of persons associated with the appellants in this action, to unlawfully seize portions of the north half of the San Fernando rancho.

Lacey *v.* Porter was cited with approval in the concurring opinion of Justice Harrison, in the case of White *v.* Warren 120 Cal. p. 329. The converse of the rule laid down in Lacey *v.* Porter must necessarily be sound law; that is to say, if the plaintiff has made a case, and the showing of the defendant is insufficient to support a verdict, should one be rendered in favor of the defendant, it lies within the province of the court to instruct the jury to find for the plaintiff.

(*d*) The appellants' last assignment of error is that "The court erred in rendering a judgment of affirmance of the judgment and order of the trial court in favor of the plaintiff, when it should have rendered a judgment of reversal in favor of the defendants in that court. Reference is hereby made

to the record of said case for further particulars bearing on this petition and these assignments of error."

It would seem superfluous to add that the argument already made by us is a complete answer to the position here taken by the appellants. But, in order that we should not leave any of the points relied upon by appellants in the argument of this cause in the court below unanswered, we will briefly reply to the argument made there, and which we presume will be made here upon various questions which would naturally arise under the fifth assignment of error.

It was urged in the court below that the trial court erred in failing to instruct the jury that unless they could find from the evidence that an actual survey was made, then all the evidence as to the exact location of such survey falls to the ground. A survey never made can have no location in fact. The court below ignored this offer.

It was also urged that the Hancock survey was void and the patent nugatory because of certain errors in that survey and because, among other things, the witness Pico, who was one of Hancock's assistants, said that the survey was made in the summer of 1858, when, in fact, it was made in December, of the same year.

An error caused by a failure of memory as to an event transpiring more than one-third of a century before the trial, does not even create the slightest suspicion.

Another fact which counsel exaggerated in the court below into relevancy, is the statement of appellee's witness Ensign that the Hancock survey was not made according to the minutes. Had it been otherwise, there would have been a perfect survey—quite impossible under any circumstances, and never to be expected in the survey of a mountainous

country, such as that over which Hancock was compelled to tramp. Counsel even urged in argument, in the court below, that he believed that Hancock did not make a survey. But counsel is not a witness, and if he had been, such testimony would have been excluded.

The conclusive answer to all this sort of argument is that the government has finally determined that Hancock did make the patent survey, and the testimony of Ensign shows that there is no difficulty in locating it; at least, no more difficulty than is common in cases involving Mexican grants in California. Many errors in courses and distances appear—one or two in the description of monuments—such, for instance, as the call for a live oak tree at station 39, when in truth the tree actually marked was a white oak. [Tr. fol. 606.] This is the tree which the witness Pico identified as being the actual monument adopted by Hancock. Pico pointed out, as we have previously shown, the tree to Ensign. [Tr. fols. 405, 422-3.] It might be added that Pico was over every foot of the Hancock survey [Tr. fol. 407]. At folio 426 Ensign referred to an impression (negative) appearing upon the inside of the bark of a tree found by him upon the northwest corner of the Escorpion ranch, which is station 34 of the patent boundary. This fragment demonstrated that many years before, doubtless in 1858, when Hancock was there, the letters appearing upon it in negative had been cut into the wood and gradually the bark spread over and into the wounds made by the party who formed the letters. Thus there was proved, in an uncommon manner, the identity of that particular tree. If Grove's vagaries were to prevail, we would reach the ridiculous result that this tree had been moved half a mile.

Mr. Ensign was also able to correct an erroneous call of considerable magnitude in the Hancock sur-

vey, because of the location of the coast survey monument mentioned *ante* [Tr. fols. 429, 461, 464, 465, *et seq.*]

In determining the boundaries of the patent, courses and distances must yield to natural objects or monuments called for.

Adair *v.* White, 85 Cal. 313.

In that case, the court said: "It rarely happens that the lines of one survey run by courses and distances are found to coincide with the lines so run in a subsequent survey." See also C.C.P. of California, section 2077.

It has been held that a mountain range is a definite boundary and the boundary goes to the comb or dividing line of the ridge.

Ornbaum *v.* His Creditors, 61 Cal. 455.

As between the map and the survey the latter controls.

O'Farrell *v.* Harney, 51 Cal. 125;

Cleveland *v.* Choate, 77 *Id.* 78;

Whiting *v.* Gardiner, 80 *Id.* 80.

For other rules applicable to this subject, we refer to:

Tognazzini *v.* Morganti, 84 Cal. 159;

Beaudry *v.* Doyle, 68 Cal. 105;

McIver's Lessee *v.* Walker, 7 Cranch. 177;

Colton *v.* Seavey, 22 Cal. 496;

2 Dev. on Deeds, sec. 1029.

It will be remembered that Mr. Wiley not only referred to the south boundary line as being on the comb of the mountain, but he also testified to the holding of possession up to the San Vicente line. [Tr. fols. 318-9.]

Mendenhall *v.* Paris, 84 Cal. 193.

Although a survey may be inaccurate in many respects, it is not necessarily void for that reason. In Higuera's heirs *v.* U. S., 5 Wall. 469, the court said that "most or all of the courses given in the

decree are undoubtedly erroneous." Yet that decree was sustained.

In the argument of this case in the court below, counsel for appellants criticized the trial court because of its failure to instruct as to what constitutes possession. The alleged error is immaterial, because there is no dispute, notwithstanding counsel's assertion to the contrary, that the appellants did enter upon land in the actual possession of appellee, nor is there any rational controversy regarding the completeness of appellee's paper title. However, we will briefly consider the specific objections they have urged upon this point. It was said that the alleged possession was not definite as to its boundary. Counsel disputed the testimony of Mr. Van Nuys, and averred that it was not true that Mr. Van Nuys has always claimed under the Reynolds or partition map. No witness was put upon the stand to contradict Mr. Van Nuys. It is not true that there are conflicting maps, embracing different areas of great extent. The Hancock survey, when located by fixed monuments, by adjacent government surveys and Mexican grants, coincides with that of Reynolds. But the conclusive answer to this contention is that the appellants here did not attempt to confine their predatory expeditions to the premises located near the exterior boundaries of the grant, but they penetrated to the heart of the tract and seized lands which no one pretends, as far as the evidence goes, are outside of the patent survey, even as the same is erroneously located by the platting of Grove in plaintiff 's exhibit 2.

It was also claimed in the court below, by appellants, that there was nothing to establish the correctness of plaintiff 's exhibit 30, and that the same depends upon the Reynolds survey. But the Reynolds survey is proven to be correct by the testimony of Ensign, so also as to exhibit 30 [Tr. fol.

424], and neither the witness Grove, nor any one connected with the defense, have made any investigation of the boundary lines upon the ground. And if the court will refer again to witness Grove's map, plaintiff's exhibit 2, and will observe the locations of the Rancho El Encino thereon, and will then recur to plaintiff's exhibit 30, it will be seen that there is no material difference as far as appellants' attempted locations are concerned, between the statements of Grove and those of our witnesses. Grove pretended that the blue line immediately south of the south line of the Encino is the true location of the Hancock survey. The falsity of this claim is manifest when we remember that the San Vicente and San Fernando ranchos have, at that point, a common boundary. But, assuming that witness Grove is right, for the time being, still each of the appellants is north of the south line of the San Fernando, as he locates it, and not one of them is south of the prolonged south boundary of the Encino. One of the parties, Mrs. Mosher, took possession northeast of the Escorpion and just south of the line which separates the appellee's premises from the other owners of the San Fernando on the north. [See tract marked "Rose D. Mosher" on plaintiff's exhibit 30.]

The appellant John J. Shore personally marked his location on exhibit 30. [Tr. fol. 346.] [See also admission by Grove, Tr. fol. 778.]

We have already alluded to the fact that there were 12,000 acres constituting the easterly portion of the tract set apart to the San Fernando Farm Homestead Association, sold prior to the appellants' entry. This tract is about five miles east of the Encino and is not in any way involved here.

In argument below counsel also asserted that the Reynolds map fixes the various sections half a mile from their true location on the government map. If

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this remark were correct, the circumstances would not aid appellants, because they would all still be within the most circumscribed survey of the San Fernando which their ingenuity has been able to devise or suggest. Appellants also claim that one P. Higgins has occupied a portion of the ranch, and that therefore appellee's possession had not been exclusive; but, accepting Higgins' statements as absolutely reliable, no benefit can accrue to appellants. This witness, as heretofore shown, claims that he, Lavalle and Tullis occupy parts of sections 35 and 36, which he fixes as being on the south line of the San Fernando grant. [Tr. fol. 750.] But he and his fellow settlers hold up only to what is marked on Grove's map "plaintiff's exhibit 2," as the south line of the Hancock survey. They have made no other intrusion upon the tract. They do not attempt to go north of that line. [Tr. fol. 756.] The witness Higgins admitted that he is south of the Encino. Assuming, therefore, that Higgins and his associates are in possession of a strip containing thirty or forty acres or more along the south boundary of the grant, how can this be said to interfere with the exclusive possession by plaintiff of the property upon which these appellants squatted. Appellants also claim, in argument in the court below, that the record showed that for ten years prior to the date of ousting, appellants' possession had been "scrambling." Such a position is absurd. The testimony of Van Nuys, Lankershim and others, not denied by any of these appellants, settles this. At times, misguided and badly advised men have entered upon appellee's property. They have been uniformly ejected. Their holdings have been very small, and their career was brief. These suits, one of which [34 Pac. Rep. 518], was affirmed in favor of the appellee here, in the court below, from which this appeal has been taken, demonstrate the legality

and rectitude of appellee's contentions, and constitute an adoption and recognition of the position taken by that corporation as to its grant and the boundaries thereof. If A enters B's house unlawfully, and B seizes him and duly throws him out of the window, or calls in a policeman who properly performs such service, the appellants here would claim that thereupon they would be authorized to pounce upon B's possessions because of his previous disturbance by an audacious and unsuccessful miscreant. The lands upon which appellants entered had been farmed. The stubble fields of those whom they deliberately sought to wrong were under their feet. The title which they took was a United States patent, and it might well be said here, of the claims of the appellants, as was said by Justice Van Dyke in the case of Saunders *v.* La Purissima Gold Mining Co., *et al.*, 125 Cal. page 167, that "if such claims as that presented by the defendants here were sanctioned by the court, a patent to lands in this state, instead of being a muniment of title, would simply be an invitation to parties to invade the premises for the purpose of ascertaining whether facts and conditions existed prior to the grant or patent so as to avoid the same."

(*e*) It was also claimed by appellants' counsel in argument in the court below, that there was no cultivation of the lands entered upon by the appellants, and an attempt was there made to prove that witnesses Gray and Van Nuys contradicted themselves. Both of these witnesses agree that all of this land was cultivated. Mr. Van Nuys, who is most familiar with the property, goes over the matter in detail. [Tr. pp. 127–130.] Mr. Gray's evidence speaks for itself, and establishes the willful destruction of property by a number of unscrupulous trespassers, including appellants. [Tr. fols. 354, 355, 356.]

Evidence is to be estimated, not only by its own

intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict, and therefore, if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory was in the power of the party, the evidence should be viewed with distrust.

C.C.P., Sec. 2061.

If Van Nuys, Lankershim, Gray and others did not locate the scenes of appellants' marauding with accuracy, why did not appellants take the stand and so testify? Why did they leave the question of possession to be determined without announcing their views? The answer is not difficult. They avoided speaking whenever possible, and Shore and Tarbell, who did appear, were compelled by appellee, and they fixed their locations definitely, as indicated upon exhibit 30, and with relation to both the Escorpion and Encino ranchos. They did not dare to swear that any statement made by appellee was untrue.

(*f*) The further point was made in the court below that the court should have instructed the jury that it was necessary to show that, at the time of the commencement of the action, the appellants here were in possession of a portion of the land. Undoubtedly, it must appear that at the time of the commencement of the suit there had been an ouster. Counsel argued that it was shown by the testimony of Gray [Tr. fol. 356] that there was no exclusion of appellants from possession. Mr. Gray does show that there was an actual entry and disturbance of appellee's occupancy. The appellants, by their filings in the land office [see testimony of Stevens, Tr. p. 123, *et seq.*] made an attempt to appropriate the land. Tarbell and Shore swore that they entered for the purpose of *maintaining a settlement*; that they intended to acquire the property; that they were members of an association containing over 100 people, organized for the

purpose of settlement upon this property. [Tr. fols. 397-402.] Grove testified with reference to the association, and that he pointed out various sections to different people who desired to settle. It is shown in Lacey *v.* Porter, 103 Cal. 605, and Los Angeles Farming and Milling Company *v.* Hoff, 34 Pac. Rep. 518, that there was an organized effort by a squatters' league to settle upon the entire rancho ex-Mission San Fernando, the south half of which, less 12,000 acres, is involved in this action. Grove was the league surveyor [Tr. fols. 775-7], and his name bobs up frequently in both of the cases lastly hereinbefore cited, as performing the functions of that office. Van Nuys said that twenty or thirty squatters built homes upon the ranch. [Tr. fols. 385-6.] There was a conspiracy on the part of the squatters' league referred to, looking to the despoiling of the appellee. This suit was brought October 31st, 1891. [Tr. fol. 36.] Appellant Shore concedes that he entered October 8, and left December 10th, 1891. Tarbell joined the league in September, 1891, and was on the ranch for two months. [Tr. fols. 398-9.] The attempted filings were made about the time the suit was brought, to-wit: Mosher, October 21st, 1891; Cox, October 19, 1891; Shore, October 22nd, 1891; Vincent, October 17th, 1891; Carter, October 12th, 1891; Tarbell, September 30th, 1891. [Tr. fols. 361-369.]

One of the peculiar features of the defense herein consists in the fact that although the appellants each pretend that they are entitled to 160 acres of land, not one of them is willing to identify these premises in his answer. But there is nothing in the position assumed by appellants in the court below, that made it necessary to show possession by them, on any theory, for no issue as to ouster is made by the answer. There is but one defense pleaded and the same is found in answer containing twenty paragraphs. [Tr. fol. 44-98.] Let us con-

sider paragraph XVI, [Tr. pp. 32-3]. There the defendant admits she entered upon a claim of one hundred and sixty acres of the land described in the complaint, but which she says is outside of the limits of the grant. [Tr. fol. 90.] That she entered upon said land with the intention of declaring a homestead thereon; that the lands are within the boundaries of the appellee's claim, but are within the boundaries of the tract originally confirmed to de Celis. [Tr. fol. 91.] The paragraph concludes with this recitation: "Defendant says it is not true that she has no interest in the said one hundred and sixty acres. As an actual settler thereon she asserts a right to occupy and complete her title thereto under the homestead laws." In the next paragraph XVII, [Tr. fol. 94], she admits her entry, but denies that appellee was in possession. Denies that the land belongs to appellee [Tr. fol. 97]. We have already called attention to the fact that the description contained in the complaint is made in accordance with the Reynolds map. Paragraph XI [Tr. fol. 80] defendant denies the ownership of appellee. The answer to which we have thus referred is similar in all respects to those filed by the other appellants. [Tr. fol. 849.]

> "An ouster may be and very frequently is admitted by the pleadings. Where a defendant in his plea or answer sets up the defense of adverse possession his plea or answer to it will be treated as a confession of the ouster and render the proof unnecessary on the trial. So where a defendant denies the title of the plaintiff and his right of entry, or pleads not guilty and claims the exclusive possession and the like, the ouster is admitted."
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> Newell on Ejectment, p. 133.

Where defendant admits that he was in possession of a part of the premises claiming it, the ouster is established.

McCreery *v.* Everding, 44 Cal. 287.

Wrongful withholding of possession is an ouster.
Marshall *v.* Shafter, 32 Cal. 194.

Where in ejectment the answer puts in issue the plaintiff's title and right of possession, a denial of plaintiff's title, coupled with the taking of possession of part of the property is itself enough to establish an ouster.

Salmon *v.* Wilson, 41 Cal. 610;

Carpentier *v.* Gardiner, 29 Cal. 160.

If the invaders with whom these appellants are associated had clearly marked, had specifically notified plaintiff of the exact claim made, still they could have been well sued together. It is really a common enterprise, the result of a carefully conceived conspiracy. If we had sued these people for a specific piece of property within the main grant, we would have had much difficulty in locating their possession. Their situation is not one which appeals to honesty or fair dealing.

For reasons given in the Hoff case, *supra*, it made very little difference what instructions were given or refused. The verdict was right in any event.

(*g*) It was also urged by appellants, in the court below, that the trial court erred in refusing to instruct the jury that they might render separate verdicts.

When it is considered that the verdict must, in any event, have been adverse to appellants, it becomes obvious that it is wholly immaterial whether the jury reported their conclusions separately or otherwise. There is no rule of law in conflict with this proposition.

(*h*) Much was urged in argument in the court below as to the sacredness of jury trials and as to the misfortunes of the poor litigant who knows (as stated by counsel for appellants) "that the judge owes his election to the adverse party at whose pleas-

ure he may be unseated at the coming election," etc. All this is irrelevant.

As long as those who, like appellee here, are rightfully in possession of property for which they have paid their own good money, are interfered with by such despoilers as these appellants, so long will judges who obey the law instruct juries as did the trial court in this action. It would be a sad state of affairs were it otherwise. All insinuations and pretensions concerning the invalidity of appellee's patent are fanciful creations. The original grantees herein of the Mexican government are dead. Hancock, who located the patent lines, is no more. The property has passed into the hands of innocent purchasers, and had there been frauds innumerable the same would not, even in a suit by the government, be sufficient to affect the patent under which appellee claims. [Colorado C. & I. Co. *v.* U. S., 123 U. S. 307.]

After all our courts have so positively denied the right of any so-called homesteader to enter upon the possession of another, and have, without variation, denied the right to collaterally impeach a patent, the repetition of attempts in those directions is unaccountable.

Your honors will recognize that in preparing our brief in this case without having received the brief of the appellants, we are placed at considerable disadvantage, and have had to indulge in conjectures to some extent as to the line of argument to be adopted by the appellants. Our knowledge of the positions taken by them in all former hearings of this case has been our only guide as to the position which will be taken by them upon this final hearing, and if we have pursued our inquiry as to minor points which can be incidentally raised under the specifications of error to the verge of tediousness, we have done so from abundant caution.

We respectfully submit that the judgment of the Supreme Court of the state of California was in all particulars correct and should be affirmed.

STEPHEN M. WHITE,
JAMES H. SHANKLAND,
Solicitors for Appellee.

GRAVES, O'MELVENY & SHANKLAND, *of Counsel.*

Appendix.

[L. A. No. 182. Department one. July 22, 1897.]

Los Angeles Farming & Milling Co., respondent, *v.* C. S. Thompson *et al.*, appellants.

Appeal from a judgment of the Superior Court of Los Angeles county and from an order denying a new trial. Walter Van Dyke, judge.

OPINION OF THE COURT.

Harrison, J.—This action was brought against a large number of defendants to recover possession of certain land in the county of Los Angeles and to restrain the defendants from injury thereto. The land described in the complaint is the south half of the Rancho ex-Mission de San Fernando, with certain exceptions, and the complaint alleges its ownership by the plaintiff, and the unlawful entry thereon and withholding of the possession by the defendants, and that they are committing injury, both temporary and permanent, to the said land. Most of the defendants suffered default, but eight of them filed answers to the complaint, upon which the cause was tried before a jury. At the close of the trial, upon the motion of the plaintiff, the court directed the jury to find a verdict in its favor against these defendants. From the judgment entered thereon and from an order denying a new trial they have appealed.

At the trial the plaintiff introduced in evidence a patent from the United States to Eulogio de Celis for the Rancho ex-Mission de San Fernando, dated January 8, 1873, and showed that the grantor of the plaintiff, who had purchased an undivided half of the rancho in 1869, had, after the issuance of the patent, brought a suit for a partition of the rancho, and that by the decree in that suit he was awarded the tract described in the complaint.

The patent recites that in the petition of the claimant presented to the board of land commissioners he "claimed the confirmation of his title to a tract of land known by the name of Mission of San Fernando, containing fourteen square leagues, situated in the county of Los Angeles, and state of California, said claim being founded on a Mexican deed of grant to the petitioner, made on the seventeenth day of June, 1846, by Pio Pico, then constitutional governor of the department of the Californias."

The defendants offered to introduce in evidence the petition of Eulogio de Celis to the board of land commissioners for the confirmation of his claim to the land, together with copies of the grant from Governor Pico to him; the decree of confirmation of the claim by the board, with its opinion upon its validity; and stated in connection with their offer that they "proposed to prove by said petition and by such alleged grant that the petitioner did not claim said lands or any part thereof, by virtue of any right or title derived from the Spanish or Mexican government; that they wished to prove by said documents that said grant was void, for the reason that it was an attempted grant of mission lands reserved from and not subject to grant under the laws and regulations of the Mexican government, and that the facts stated in said petition and in said grant proved that said board had no jurisdiction over the subject matter of said case, and that the decree confirming said claim was without jurisdiction and void." Upon the objection of the plaintiff that this evidence was irrelevant, incompetent, and immaterial, it was excluded by the court. This ruling is claimed by the appellants to have been erroneous, and in support of their claim they contend that the only claims to land which the board of land commissioners had jurisdiction to pass upon were such as were "by virtue of any right or title derived from

the Spanish or Mexican government," and that as the petition for confirmation showed that the claim was not by virtue of such right or title, the board had no jurisdiction over it, and that its decree of confirmation, as well as the patent issued thereon, were void, as being the acts of officers without authority over the subject matter upon which they acted; that it appears upon the face of the petition that the board of land commissioners had no jurisdiction in the matter, for the reason that at the date of the grant the government of California had no authority to make a sale of this land. In support of the latter proposition appellants cite the cases of United States *v.* Vallejo, 1 Black, 541, and United States *v.* Workman, 1 Wall. 745. These were cases, however, in which appeals were taken by the United States directly from the decree of confirmation, and were direct attacks upon the validity of the judgments appealed from, whereas the evidence offered in the present case is for the purpose of a collateral attack upon the validity of the decree of confirmation. The board of land commissioners was authorized to adjudicate upon the validity of every claim for lands in California which purported to be derived from the Spanish or Mexican government. The validity of the claim included the authority of the governor to make the grant, as well as the existence or effect of the laws of Mexico concerning the same, and the jurisdiction of the board extended to the determination of each of these questions as fully as to determining whether there had been a full compliance with the forms of law in making the grant, and its judgment thereon cannot be collaterally assailed on account of any error it may have committed in reference thereto.

The same question was presented in Beard *v.* Federy, 3 Wall. 478, where, after the patent had been introduced in evidence by the plaintiff, the

defendant produced the petition of the claimant before the board of land commissioners and insisted that it showed a want of jurisdiction in the board for the reason that it did not set forth any right or title derived from the Spanish or Mexican government; but the court said: "The board having acquired jurisdiction, the validity of the claim presented and whether it was entitled to confirmation were matters for it to determine; and its decision, however erroneous, cannot be collaterally assailed on the ground that it was rendered upon insufficient evidence;" and, in considering the effect of a patent, said: "By it the government declares that the claim asserted was valid under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty, and might have been located under the former government, and is correctly located now so as to embrace the premises as they are surveyed and described. As against the government, this record, so long as it remains unvacated, is conclusive, and it is equally conclusive against parties claiming under the government by title subsequent." In Moore *v.* Steinbach, 127 U. S. 70, the plaintiffs claimed under a patent of the United States issued to Manuel Antonio Rodrigues de Poli, which recited the proceedings taken before the land commission; the filing of a petition for the confirmation of his title to a tract of land known as the Mission of San Buena Ventura, his claim being founded upon a sale made on the 8th of June, 1846, by the then governor of the department of California; the degree of confirmation of that claim by the board of land commissioners, and its affirmance by the District Court and the Supreme Court on appeal. It was contended by the defendants that the sale to Poli of the ex-Mission of San Buena Ventura was illegal and void, and that hence no title passed to the patentee on its confirmation, and

United States *v.* Workman, *supra*, was cited in support of this contention; but the court said: "It does not follow that there were not exceptional circumstances with reference to the sale to Poli which authorized the governor to make it. We are bound to suppose that such was the case, in the absence of any evidence to the contrary, from the fact that the validity of his claim under it was confirmed by the board of land commissioners, by the district court of the United States, and by this court on appeal. The question of its validity was thereby forever closed, except as against those who might be able to show a prior and better title to the premises."

The appellants also contend that the court erred in directing the jury to find a verdict in favor of the plaintiff. The correctness of this ruling depends upon whether there was any evidence before the jury which would have authorized a different verdict. If, upon the trial of an issue, there is any conflict in the evidence, or if different inferences of fact may be drawn from the evidence, it is the function of the jury to determine the issue; but if, upon all the evidence in the case only one conclusion or finding can be made, it is immaterial whether the jury make that conclusion or finding by direction of the court or upon their own deliberation. The verdict must be in accordance with the evidence, and cannot be given from conjecture, or at the arbitrary discretion of the jury; and, if the evidence is such that the court would be bound to set aside a verdict in favor of one party as contrary to the evidence, the matter becomes a question of law to be ruled upon by the court, and it is not required to submit the case to the arbitrament of a jury, but may direct a verdict in accordance with its ruling upon the question of law.

To authorize a verdict in its favor the plaintiff was required to establish its title to the lands

described in the complaint, and to show that at the commencement of the action the defendants were unlawfully in the possession of some portion thereof. The patent from the United States established the title of the patentee to the lands embraced within the survey contained therein, and it was admitted at the trial that whatever title to the property described in the complaint passed from the United States by the patent had become vested in the plaintiff. The defendants sought to show at the trial that there had been no actual survey upon the ground of the tract described in the patent, and that for this reason the patent was invalid; but a patent is an instrument of too solemn a character to be disregarded by reason of evidence of this character. Its issuance by the government foreclosed all collateral attacks upon the regularity and sufficiency of any of the steps or proceedings upon which it depended. It was a declaration by the government, as was said in Beard *v.* Federy, *supra*, that the claim asserted "is correctly located so as to embrace the premises as they are surveyed and described." The survey set forth in the patent had been made in 1858 by Henry Hancock, and in December, 1870, a resurvey of the rancho had been made by one Reynolds for the purpose of the aforesaid suit in partition. The description in the complaint is according to the Reynolds survey, and in 1892, after the commencement of the present action, the rancho was again surveyed by one Ensign, by whose testimony it was shown that the map or plat of the Reynolds survey was a correct delineation of the land described in the patent. It was shown upon the cross examination of this witness that there were certain variations in the courses and distances given in the Hancock survey from those given in the Reynolds survey, and that some of the monuments named in the Hancock survey could not be

found. The defendants also introduced a "comparative map" on which had been platted the lines of the several surveys of Hancock, Reynolds, and Ensign, according to the courses and distances given in their field notes, and which indicated a discrepancy in a certain part of the tract of nearly half a mile in extent. From these facts they contend that Hancock did not make a survey upon the ground according to the courses and distances given in the patent, and that the discrepancy between the several surveys shows that the description of the land given in the patent is so indefinite as to render it void. Whether a particular parcel of land is within the lines of a survey is a question of fact to be shown by evidence, but whether the lines of a survey which purport to describe a tract of land in a deed sufficiently defines the land to be conveyed is to be determined by the court when the deed is offered in evidence. The field notes of a survey are not limited to the courses and distances set forth therein, but include also the monuments referred to, and all the objects mentioned by which the lines of the survey can be ascertained. All of these make up a description in words by which a map or picture of the tract as it appears upon the surface of the earth may be placed upon paper and presented to the eye. If there is any discrepancy between the monuments and the courses and distances, the monuments must prevail, and if these monuments can be ascertained, the lines connecting them will be the lines of the tract, irrespective of their variation from the lines given by the courses and distances. The rancho in question contains upward of one hundred and sixteen thousand acres, has forty-four exterior lines of boundary, many of them several miles in length, and situated in a mountainous and uncultivated region. It is not to be expected that the lines of any two surveyors in tracing these boundaries according to their

courses and distances merely would coincide exactly, or that the measurement and direction between the monuments would in all instances be the same. [See Adair *v.* White, 85 Cal. 313.] But the description is sufficiently definite if the entire body of field notes affords sufficient data for its location. It may be added that the lands in the possession of the defendants, and which they claimed were not within the boundaries of the lands claimed by the plaintiff, are far within the lines of the patent as shown by the plat of either of these surveys. From the evidence before the jury it could not have been found otherwise than that the tract of land described in the complaint was within the boundaries of the patent.

The possession by the defendants of a portion of the lands within the tract described in the complaint was admitted by their answers. Their denial that they unlawfully entered upon the lands, or that they unlawfully withhold possession from the plaintiff, puts in issue only the character of their possession, and their affirmative allegation that they each entered upon one hundred and sixty acres of the lands claimed by the plaintiff, and that the lands so entered upon by them are within the boundaries of the land claimed by the plaintiff, but that the plaintiff has no title thereto by reason of its being outside of the boundaries of the grant which was originally confirmed to Eulogio de Celis, relieved the plaintiff from the necessity of further proof of their possession. As they did not designate the particular tracts of which they alleged that they were in possession, there was no reason for a separate verdict in reference to each defendant, but the plaintiff was entitled to a verdict for the possession of the entire tract upon showing that it had title to all the land which it claimed in the complaint. This showing, as we have seen, was made by the introduction of the pat-

ent and the testimony with reference to the lines of the survey therein contained.

The judgment and order are affirmed.

Temple, J., and Van Fleet, J., concurred.

Hearing in bank denied.

IN THE

SUPREME COURT

OF THE

UNITED STATES

C. S. Thompson, et al.,
Plaintiffs in Error.

vs.

The Los Angeles Farming and Milling Company,
Defendant in Error.

SUPPLEMENTAL BRIEF ON PART OF APPELLEE.

Since writing and filing the main brief, on the part of the appellee, the record herein has been served upon us, and the brief of Mr. Z. Montgomery, one of the counsel for plaintiffs in error, filed January 27, 1900, has just been brought to our attention.

Preliminarily, the defendant in error objects to the hearing of this cause, and asks that the same be remanded, because the plaintiffs in error have failed to comply with the provisions of Rule VIII of this

court, in this, to wit: That said plaintiffs in error have neglected to transmit a complete record, containing such exhibits and papers as are necessary to the hearing in this court. The omitted matter consists of maps referred to in the printed transcript of the record herein, as follows:

Map 10, page 62;
Map 14, (Exhibit 29), p. 106;
Map 9, (Exhibit 30), p. 134;
Map 2, p. 230;
Map 3, p. 230;
Map 8, (Exhibit 24), p. 231;
Map 5, (Exhibit 25), p. 231;
Map 7, (Exhibit 26), *Id.*;
Map 4, (Exhibit 27), *Id.*;
Map 1, (Exhibit 28), p. 232;
May 12, (Exhibit 22), p. 233;
Map 15, (Def'ts. Ex. 2), p. 258;
Map 6, (Def'ts. Ex. 3), p. 267;
Map 13, (Def'ts. Ex. 6), p. 270.

We were unable to make this objection in our original brief, as, at that time, we had not received a copy of the transcript of the record, and were not aware of appellants' neglect to file a complete record.

In Mr. Montgomery's brief it is contended that the patent issued to Eulogio de Celis, dated January 8, 1883, was not conclusive of the case, and that the court erred in refusing to permit the introduction of Celis' petition before the board of land commissioners, and that the court erred in refusing to allow the defendants in error to prove by the grant that de Celis did not claim the lands in question by virtue of any right or title derived from the Spanish or Mexican government. The authorities cited in the brief of defendant in error, pages 24-8, are sufficient to dispose of this entire contention; but in view of some of the propositions advanced by oppos-

ing counsel, we deem it proper to submit the following additional remarks:

In De Guyer *v.* Banning, 167 U. S. 740, the Supreme Court reiterated the doctrine announced in Beard *v.* Federy, 3 Wallace, 478, 491, and quoted with approval the doctrine announced by this court many years ago with reference to Mexican grants, viz: "If parties asserting interests in lands acquired since the acquisition of the country could deny and controvert this record (the patent) and compel the patentee in every suit for his land to establish the validity of his claim, the right to its confirmation and the correctness of the action of the tribunals and officers of the United States in the location of the same, the patent would fail to be as it was intended it should be, an instrument of quiet security to its possessor." And this court further recognized the efficacy of a number of the decisions cited on pages 24-5, of the brief already filed herein on behalf of the defendant in error. See particularly the views of the Supreme Court of California, approved by this court, 167 U. S. 742.

The following language of Mr. Justice Field, when sitting in the Supreme Court of California, in Moore *v.* Wilkinson, 13 Cal. 488, was likewise commended in the De Guyer case. It was there said: "The fifteenth section of the act of congress of 1851, provides that the final decree of confirmation and the patent shall be conclusive between the United States and the claimants only, and shall not affect the interests of third persons. If conclusive between the United States and the claimants, *it must be equally so between persons holding under either of those parties.*" In the present instance, the intruders who have brought this case here, profess to claim as citizens of the United States and under the government thereof. They are, therefore, absolutely concluded by the recitations of the patent and cannot

in any manner attack or controvert it. There is no decision, by either this court or the Supreme Court of California, to the purport that a patent of the United States issued upon a final decree of the board of land commissioners has been successfully assailed. In the De Guyer case, to which we have already made reference, this court approved the language of the Supreme Court of California in Leese *v.* Clark, 18 Cal. 535, and said: "The patent purports to convey the lands described in the survey, and its scope cannot be extended; *nor on the other hand, can it be limited by showing that the decree comprises a greater or less area than the survey*; nor can the claimant, after admitting—as he must—the conclusive effect of the patent, make out title to lands not conveyed by the patent, by the production of the proceedings which culminated in the patent. The patent, while it remains in force, conclusively determines what lands the claimant was entitled to under his claim and the decree of confirmation." It is unreasonable to claim that the government is not bound by its own patent, issued under the authority of an act of congress. A board was organized to determine whether the grant in question was valid, and it seems superfluous at this time to call attention to the oft-reiterated proposition that the government of the United States is bound by the recorded action of tribunals of its own making, vested with authority to pass upon the validity or invalidity of Mexican grants. As stated above there is not a solitary case where a patent of the United States, claimed to be based upon a Mexican grant, within the limits of California, has ever been disturbed, though efforts have sometimes been made in that direction. In this instance, the government makes no pretense; it does not seek to undo that which it deliberately accomplished by the issuance of a patent; nor to disturb purchasers in good faith

who have invested their fortunes, relying upon a solemn public record, authenticated by the president of the United States. The patent is set forth in the record, pages 42-63; and was issued by President Grant on the 8th day of January, 1873. The premises involved were set apart by judgment in partition [Tr. pp. 64 *et seq.*] to defendant's predecessors in interest, and possession was taken and asserted under that decree and was uniformly maintained. [Testimony of Van Nuys, Tr. pp. 125 *et seq.*; Lankershim, Tr. pp. 111-117, 121-2]. The deliberate intrusion of the plaintiffs in error upon lands in the peaceable possession of the defendant in error cannot be justified upon any theory; and the squatter invasion upon this cultivated and improved territory finds no justification in any decision of any court. While it is obvious that the entry of the plaintiffs in error was not warranted because of the fact that the title had already passed to the defendant in error, it is also established that had the defendant in error been possessed of no paper title, its actual peaceable possession should have been sufficient to prevent the entry in question, and is enough to justify the judgment. Outside of the proposition that the patent is conclusive, it is well settled that a peaceable possessor cannot be disturbed by one who, without title himself, merely aspires to ownership or occupancy. The maintenance of any other doctrine would be subversive of order and decent government.

Respectfully submitted.

STEPHEN M. WHITE,
JAMES H. SHANKLAND,
Solicitor for Appellee.

GRAVES, O'MELVENY & SHANKLAND,
of Counsel.

Supreme Court of the United States.

No. 87.—October Term, 1900.

C. S. Thompson, Joseph Mazet, Rose D. Mosher, F. M. Culp, Henry C. Vincent, R. J. Tarbell, John J. Shore, I. B. Cox and Edwin G. Carter, Plaintiffs in Error,
vs.
The Los Angeles Farming and Milling Company.

In error to the Supreme Court of the State of California.

[January 7, 1901.]

Mr. Justice McKenna delivered the opinion of the Court.

This is an action of ejectment in which defendant in error was plaintiff in the court below, and the plaintiffs in error were defendants. It was brought in the Superior Court of Los Angeles County, State of California. Besides a prayer for the recovery of the land in controversy an injunction was asked against the commission or repetition of certain described trespasses. The land sued for was the south half of the Rancho ex-Mission de San Fernando, with certain exceptions. The defendant in error relied for title upon a patent of the United States to Eulogio de Celis, dated January 8, 1875, which recited that it was based upon the confirmation of his title as one derived from the Mexican government through a deed of grant made the 17th day of June, 1846, by Pio Pico, the then constitutional governor of the department of the Californias. The grantor of defendant in error purchased an undivided half of the rancho in 1869, and became the owner in severalty of the tract sued for by partition proceedings.

One of the defenses of the action, and the only one we are concerned with on this writ of error, was the invalidity of the patent based on the invalidity of the grant from the Mexican government, and its confirmation by the Board of Land Commissioners.

The answer sets out the proceedings before the board, its decision and decree, and the deed of Pio Pico. As much of the deed as is necessary to quote is as follows:

"The undersigned, constitutional governor of the department of the Californias, in virtue of the powers vested unto him by the supreme government of the nation, and in virtue of a decree of the honorable departmental assembly of April third of the present year, to raise means for the purpose of maintaining the integrity of the territory of this department, for the sum of fourteen thousand dollars, which he receives, sells unto

Don Eulogio de Celis and his heirs, ex-Mission of San Fernando with all its properties, estates, lands and movables, with the exception of the church and all its appurtenances, which remains for public use. Said purchaser obligating himself to maintain on their lands the old Indians on the premises during their lifetime, with the right to make their crops, with the only condition that they shall not have the right to sell the lands they cultivate and any other which they possess without anterior title from the departmental government, for all of which the aforesaid Senor Celis shall be acknowledged as the legitimate owner of the aforesaid ex-Mission of San Fernando, to use the same as to him shall seem best, guaranteeing unto him, as this government does guarantee, that he is well possessed of the aforesaid estate with all the prerogatives granted by law to purchasers, with the only condition that the above mentioned purchaser shall not take possession within the space of eight months from the date hereof, within which delay the government shall have the right to annul this contract by reimbursing to the aforesaid Senor Celis the sum of fourteen thousand dollars with interest at the current commercial rates; but if this reimbursement is not operated within the aforesaid eight months, this sale shall be valid."

The petition to the board was as follows:

"Before the commissioners to ascertain and settle private land claims in the State of California.

"Eulogio de Celis gives notice that he claims a tract of land situated in the present county of Los Angeles, known by the name of Mission of San Fernando, bounded as follows: On the north by the rancho of San Francisco, on the west by the mountains of Santa Susanna, on the east by the rancho of Miguel Triumfo, and on the south by the mountains of Portesuelo, which tract is supposed to contain fourteen square leagues.

"Said land was sold to said Celis by a deed of grant dated the seventeenth day of June of the year eighteen hundred and forty-six, by Pio Pico, constitutional governor of the Californias, thereto duly authorized by the supreme government of the nation and by a decree of the departmental assembly of April third, eighteen hundred and forty-six; said sale was made for the sum of fourteen thousand dollars, which was paid by the said Celis to the said Pio Pico, who acknowledged the receipt thereof, as will more fully appear by reference to the aforesaid deed of grant, copy whereof marked A is hereto annexed.

"Claimant avers that the aforesaid deed of sale contains the condition that the government of Mexico shall have the right to annul the contract by reimbursing to this claimant the aforesaid sum of fourteen thousand dollars, with the current rates of interest, and in case said sum is not reimbursed within said eight months, said Mission of San Fernando shall be his in full property. And this claimant avers that said sum of fourteen thousand dollars was never reimbursed to him by the Mexican government, or by any person whatsoever.

"Said Mission of San Fernando was leased by the government of Mexico to Andres Pico in December, 1845, for the term of ——— years, which lessee has been in the occupancy of the said property up to the present date.

"Claimant further avers that he knows of no other claim to the aforesaid mission, and he relies on the documents above referred to and witnesses he shall produce to substantiate his claim."

The material part of the decision was as follows:

"The grant purports to have been made in consideration of the payment of the sum of fourteen thousand dollars in money. Pio Pico testifies that he executed the grant at the date that the same bears, and that it was made under special instructions of his government for the purpose of raising the necessary funds to enable the department to prepare for a defense against the attack of the Americans, and that the sum of fourteen thousand dollars was actually received by him from the grantee in consideration thereof, and that the funds were used by him for the benefit of the nation in the defense of the same. The genuineness of the grant is clearly established and the circumstances under which it was made so clearly explained as to leave no doubt but it was done in good faith."

A decree was entered confirming the grant.

The title based on the proceedings before the commissioners is alleged in the several answers to be invalid for the following reasons:

"I. Because, as appears on its face, it was a deed of sale whereby said Pio Pico, governer of California, attempted, for the consideration of $14,000, to grant the lands therein mentioned to said Eulogio de Celis, which act was *ultra vires*, unauthorized by and in violation of the laws of the republic of Mexico.

"II. Because the lands so attempted to be granted were lands embraced within and belonging to the Mission of San Fernando, and not legally subject to the granting power of said governor.

"This defendant further says in this behalf that said 'commissioners to ascertain and settle the private land claims in the State of California,' never had any jurisdiction over the subject matter of said claim of said Eulogio de Celis, otherwise called Eulogio Celis, because he says that it was set out and appeared on the face of the notice and petition of said Eulogio Celis and accompanying documents, to wit, the alleged grant itself, that at the time of the making of said alleged grant the lands embraced therein were mission lands, and also that said so-called grant was in the nature of a sale for money, and that said grant was therefore without authority of law and void, and did not constitute a claim by virtue of any right or title derived from the Spanish or Mexican government.

"And defendant says that because of the facts so set out and shown in said notice and petition and accompanying documents so filed with said commissioners by said Eulogio de Celis, said commissioners were wholly without jurisdiction to adjudicate upon or to confirm said claim, and that their said decree of confirmation thereof is and always was *ultra vires* and utterly void, and that all subsequent proceedings based thereon, including the survey and patenting of said lands by the United States government, were and are wholly without authority of law and void."

The defendant in error obtained judgment in the trial court, which was affirmed by the Supreme Court of the State. (117 Cal. 594.) Thereupon the Chief Justice of the State allowed this writ of error.

The error assigned is as to the action of the trial court in excluding testimony which it is claimed tended to support the said defense.

To support the assignment of error it is urged that the governor of the Californias had no authority to make the grant, "and therefore the decree

of confirmation was without that authority of law, and was also absolutely void and a mere nullity." And it is hence further contended that the patent based on and reciting the decree was void on its face. The ultimate basis of the contention is that the Court of Private Land Claims had no jurisdiction to confirm the grant because the governor of the Californias had no power to convey the public land for a money consideration. That is to say, the grant being void it could not be the basis of a claim to lands "by virtue of any right or title derived from the Spanish or Mexican government." This conclusion is attempted to be deduced from the words of section 8 of the act of Congress of 1851, (9 Stat. 631, c. 41,) creating the Board of Land Commissioners. The section provided—

"That each and every person claiming lands in California *by virtue of any right or title derived from the Spanish or Mexican government* shall present the same to said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claim; and it shall be the duty of the commissioners when the case is ready for hearing to proceed promptly to examine the same upon such evidence and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claims."

We think that counsel put too limited a signification on the words of section 8, that the claim shall be "by virtue of any right or title derived from the Spanish or Mexican government." The words of course were descriptive of the class of claims of which the Board of Land Commissioners was given jurisdiction. They made a special tribunal of the board limited to hear a particular class of claims, but not limited to the questions of law and fact which could arise in passing on and determining the validity of any claim of the class. The power to consider whatever was necessary to the validity of the claim—propositions of law or propositions of fact—the fact of a grant, or the power to grant, was conferred. If there should be a wrong decision the remedy was not by a collateral attack on the judgment rendered. The statute provided the remedy. It allowed an appeal to the District Court of the United States, and from thence to this court. Legal procedure could not afford any better safeguards against error. Every question which could arise on the title claimed could come to and receive judgment from this court. The scheme of adjudication was made complete and all the purposes of an act to give repose to titles were accomplished. And it was certainly the purpose of the act of 1851 to give repose to titles. It was enacted not only to fulfil our treaty obligations to individuals, but to settle and define what portion of the acquired territory was public domain. It not only permitted but required all claims to be presented to the board, and barred all from future assertion which were not presented within two years after the date of the act. (Sec. 13.) The jurisdiction of the board was necessarily commensurate

with the purposes of its creation, and it was a jurisdiction to decide rightly or wrongly. If wrongly a corrective was afforded, as we have said, by an appeal by the claimant or by the United States to the District Court. (Sec. 9.) Indeed, the proceedings in the District Court were really new, and further evidence could be taken. (Sec. 10.) Upon the confirmation of the claim by the commissioners or by the District or Supreme Court, a patent was to issue and be conclusive against the United States. (Sec. 15.)

Further general discussion we do not think is necessary. This court has had occasion heretofore to consider the statute and the jurisdiction of the Board of Land Commissioners. (*Beard* v. *Federy*, 3 Wall. 478; *More* v. *Steinback*, 127 U. S. 70.)

In considering what was involved in the inquiry into the validity of a claim to land under the act, this court said in *More* v. *Steinback*, quoting *United States* v. *Fossatt*, (21 How. 445):

"It is obvious that the answer to this question must depend in a great measure upon the state and condition of the evidence. It may present questions of the genuineness and authenticity of the title, and whether the evidence is forged or fraudulent; or *it may involve an inquiry into the authority of the officer to make a grant, or whether he was in the exercise of the faculties of his office when it was made.* . . ."

The plaintiff in *More* v. *Steinbeck* depended upon a patent of the United States issued to one Manuel Antonio Rodrigues de Poli, dated August 24, 1874. It recited the proceedings taken before the Land Commissioners under the act of March 3, 1851; the filing of his petition in March, 1852, asking for the confirmation of his title to a tract of land known as the Mission of San Buena Ventura, his claim being founded upon a sale made on the 8th of June, 1846, by the then governor of the department of the Californias; the affirmation of the decree successively by the District Court of the Southern District of California, and by the Supreme Court of the United States, and the survey of the claim confirmed. It was contended that the sale to Poli of the ex-Mission San Buena Ventura was illegal and void, and hence no title passed to the patentee on its confirmation and in support of the contention, *United States* v. *Workman*, (1 Wall. 745,) was cited.

Replying to the contention the court said by Mr. Justice Field:

"In that case (*United States* v. *Workman*) it was held that the departmental assembly of California had no power to authorize the governor to alienate any public lands of the department, and that its own power was restricted to that conferred by the laws of colonization, which was simply to approve or disapprove of the grants made by the governor under those laws. But it does not follow that there were not exceptional circumstances with reference to the sale to Poli, which authorized the governor to make it. We are bound to suppose that such was the case, in the absence of any evidence to the contrary, from the fact that the validity of his claim under it was confirmed by the Board of Land Commissioners, by the District

Court of the United States, and by this court on appeal. The question of its validity was thereby forever closed, except as against those who might be able to show a prior and better title to the premises."

More fully on the point of the effect of the patent it was said in *Beard* v. *Federy:*

"This instrument is, therefore, record evidence of the action of the government upon the title of the claimant. By it the government declares that the claim asserted was valid under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty, and might have been located under the former government, and is correctly located now, so as to embrace the premises as they are surveyed and described. As against the government this record, so long as it remains unvacated, is conclusive. And it is equally conclusive against parties claiming under the government by title subsequent. It is in this effect of the patent as a record of the government that its security and protection chiefly lie. If parties asserting interest in lands acquired since the acquisition of the country could deny and controvert this record, and compel the patentee, in every suit for his land, to establish the validity of his claim, his right to its confirmation, and the correctness of the action of the tribunals and officers of the United States in the location of the same, the patent would fail to be, as it was intended it should be, an instrument of quiet and security to its possessor. The patentee would find his title recognized in one suit and rejected in another, and if his title were maintained, he would find his land located in as many different places as the varying prejudices, interests, or notions of justice of witnesses and jurymen might suggest. Every fact upon which the decree and patent rest would be opened to contestation. The intruder, resting solely upon his possession, might insist that the original claim was invalid, or was not properly located, and therefore he could not be disturbed by the patentee. No construction which will lead to such results can be given to the fifteenth section. The term 'third persons,' as there used, does not embrace all persons other than the United States and the claimants, but only those who hold superior titles, such as will enable them to resist successfully any action of the government in disposing of the property."

Plaintiffs in error deny the applicabillty of *Beard* v. *Federy* to the case at bar. We think it is applicable. They attempt to distinguish *More* v. *Steinback*. We think it cannot be distinguished. That case, it is said, depended upon the possible presence of "exceptional circumstances with reference to the sale to Poli which authorized the governor to make it (the grant)." And it hence contended that the court felt itself "bound to suppose such was the case *in the absence of any evidence to the contrary*. And taking for granted," counsel further say, "as it had to do, the jurisdiction of the board of commissioners that confirmed the Poli claim the court could reach no other conclusion. But the very thing which this court was compelled to assume in the case of the Poli claim (namely, the jurisdiction of the land commissioners), for the want of *evidence to the contrary*, is the thing which in this case we offered to prove in the court

below *did not exist;* but we were denied that privilege, and this denial we insist was error."

But how was it attempted to be shown that such jurisdiction did not exist? It was attempted to be shown, as declared in the assignment of error, by "the petition of said de Celis before the board of land commissioners for the confirmation of his claim to the land, together with copies of the grant from Governor Pico to him, and the decision of confirmation by the board."

There is nothing in either of those papers which show that exceptional circumstances with reference to the sale to de Celis did not exist. The petition makes a claim of title based on "a deed of grant dated the seventeenth day of June of the year eighteen hundred and forty-six, by Pio Pico, constitutional governor of the Californias, thereto duly authorized by the supreme government of the nation and by a decree of the departmental assembly of April third, eighteen hundred and forty-six."

The decision of the board recites that Pio Pico testified that he had special instructions from his government to make the grant, and the decision further recites that "the genuineness of the grant is clearly established and the circumstances under which it was made so clearly explained as to leave no doubt but it was done in good faith."

The papers offered in evidence therefore, instead of showing the nonexistence of special circumstances with reference to the sale to de Celis, which authorized the governor to make it, affirm the existence of those circumstances, and the contention of plaintiffs in error is reduced to this dilemma, the papers ruled out, the validity of the grant will be implied. The papers ruled in, the validity of the grant will be shown.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.